

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	22-CR-208(CBA)
	:	
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
	:	
QING YU and ZHE ZHANG,	:	October 2, 2023
	:	9:00 a.m.
Defendants.	:	
	:	

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TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE CAROL BAGLEY AMON
UNITED STATES SENIOR DISTRICT COURT JUDGE

A P P E A R A N C E S:

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Proceedings

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1 (In open court - jury not present.)

2 THE COURTROOM DEPUTY: Good morning. This is
3 criminal cause for a trial, 22-cr-208, USA versus Qing Yu,
4 also known as Allen Yu and Zhe Zhang.

5 May the parties state your name for the record,
6 starting with the Government.

7 MS. LASH: Devon Lash, Nadia Moore, Gabriel Park,
8 and we are joined by Paralegal Specialist Elizabeth Reed and
9 Special Agent Christopher Lin.

10 THE COURT: Good morning.

11 MR. KOUSOUROS: Good morning, Judge.

12 James Kousouros for Mr. Yu, along with Evan Lipton
13 and Emma Cole.

14 THE COURT: Good morning.

15 MR. MAZUREK: And good morning, Your Honor. Henry
16 Mazurek, Jason Ser, and Paralegal Specialist Carla Abreu on
17 behalf of Mr. Zhang.

18 THE COURT: Good morning.

19 We are waiting for the defendants to come up.

20 There is a matter that I just wanted to bring to
21 your attention. I think it is procedural. I'm not doing
22 anything at the moment.

23 Can I have the list.

24 I don't know why the marshals are not here.

25 (Pause.)

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1 THE COURT: I just wanted to bring to your attention
2 information we have gotten from jurors. You can be seated.
3 Two jurors: Wendy Todd, Juror No. 2; and Andrew Parks, Juror
4 No. 3 have travel plans. Wendy Todd is October 12th and
5 Andrew Parks is October 13th.

6 We are really coming up on those dates. So I'm just
7 saying to the extent that anybody can expedite this, please do
8 your best to do that.

9 Also, Alternate No. 2, Althea Barton, she's supposed
10 to start a new job tomorrow with Northwell Health. She needed
11 health insurance. She needed the job. I persuaded Northwell
12 Health to take her on as of today, to pay her until October
13 13th, and to give her health insurance, which was I think a
14 real testament to powers of persuasion. I said almost had my
15 courtroom deputy hum *America the Beautiful* in the background.
16 They were very generous to do that. But, again, you know,
17 they've told me that she can't stay past that day. So there
18 is the potential, if this doesn't move along, that we have
19 three jurors gone, which would leave us with just one
20 alternate. So I wanted to advise the parties of that so that
21 they understood the necessity of moving forward.

22 Have we heard from the marshals?

23 THE COURTROOM DEPUTY: There was a late load.

24 THE COURT: They are coming upstairs?

25 THE COURTROOM DEPUTY: Yes. Yes.

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1 MS. LASH: And, Your Honor, for jurors two and
2 three, how long are their travel plans? Is it an extended
3 trip or --

4 THE COURT: One is going to Europe --

5 THE COURTROOM DEPUTY: One is extended
6 international. The second one is a domestic for a weekend.

7 MS. LASH: Fine.

8 THE COURT: Find out more about that or talk to him
9 -- her about changing that.

10 THE COURTROOM DEPUTY: Okay.

11 THE COURT: So the marshals are their way up.
12 Counsel, if you could advise your -- do you think we need to
13 repeat all of this in front of the defendants or can you
14 advise the defendants.

15 MR. KOSOUROS: I have no problems advising my
16 client.

17 MR. MAZUREK: Same, Your Honor.

18 THE COURT: While we are waiting, the Government has
19 indicated in a letter over the weekend, Mr. Mazurek, that they
20 haven't gotten any discovery in terms of your case. Can you
21 provide that to the Government?

22 MR. MAZUREK: Yes, Your Honor. We started providing
23 it over the weekend.

24 THE COURT: Okay.

25 MS. LASH: And just as to that discovery, Your

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1 Honor, we have requested we receive it by tomorrow, taking to
2 heart, you know, trying to expedite our case and move it
3 along. There is a real chance that we could rest even before
4 Friday of this week. We need the 26.2 material for the
5 witnesses.

6 THE COURT: Yes. Mr. Mazurek?

7 MR. MAZUREK: Yes, Your Honor.

8 THE COURT: Can you honor that request?

9 MR. MAZUREK: Yes.

10 THE COURT: Thank you.

11 The defendants are coming out.

12 (Defendants present.)

13 THE COURT: Let me just address, Mr. Yu and Mr.
14 Zhang, I have advised your counsel this morning that three
15 jurors either have travel plans or have to start work by
16 October 12th or 13th, and that was Juror No. 2, Juror No. 3
17 and Alternate No. 2, and that they can tell you more details,
18 but I wanted to put that on the record before the marshals had
19 time to bring you up. That's all we discussed in your
20 absence, other than I asked Mr. Mazurek that he make sure he
21 provide the discovery the Government had requested. We also
22 addressed that, but nothing of significance to your case. I
23 just wanted to know that's what we talked about when you
24 weren't here, and we are hoping the jurors are here.

25 THE DEFENDANT: Thank you.

Proceedings

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1 THE COURT: Is your witness here?

2 MS. LASH: Yes, Your Honor.

3 THE COURT: Do you want them to take the stand so we
4 can --

5 MR. KOUSOUROS: Who are you calling?

6 MS. LASH: Brainys Acosta Pena.

7 And Your Honor, he will be testifying through a
8 Spanish interpreter.

9 THE COURT: Okay. I have separated the jurors out a
10 bit. I have asked the jurors to wear masks. I appreciate you
11 all wearing the mask.

12 Mr. Zhang, you should wear a mask. You know, we had
13 three jurors get COVID and I'm behind a screen. I'd be happy
14 to wear for solidarity.

15 MR. KOUSOUROS: While we're waiting, when we are up
16 examining or cross-examining.

17 THE COURT: You don't have to wear it for
18 questioning and the witness doesn't have to wear it.

19 Are they here?

20 THE COURTROOM DEPUTY: No, we are still waiting, at
21 least two.

22 Excuse me. 9 o'clock arrival didn't stick with a
23 few, I guess.

24 (Pause in the proceedings.)

25 THE COURT: Okay. So we're missing just one juror

1 now.

2 MS. LASH: Your Honor, while we are waiting, there
3 is an issue that I wanted to raise. I don't know if you want
4 to do it at sidebar or I could ask the witnesses to step out.
5 It doesn't relate to the witness's testimony.

6 THE COURT: It's all right. If it doesn't relate to
7 the witness's testimony, it's all right.

8 MS. LASH: Your Honor, the defense informed us that
9 they have subpoenaed retired Detective Michael Galgano to
10 testify about his investigation into the homicide, as well as
11 his interviews of Carlos Senquiz, and his receipt of the
12 Carlos Senquiz phone.

13 As to the first point, the Government continues to
14 believe that Detective Galgano's investigation into the
15 homicide is not relevant to the case and we'd like an offer of
16 proof as to what testimony they're seeking to elicit
17 concerning the interviews of Carlos Senquiz as, you know, we
18 believe this is hearsay information. And, again, the
19 information contained on the phone, that information, while he
20 might recognize the phone as the phone collected from Mr.
21 Senquiz, the content of the phone is hearsay and we don't
22 believe it is admissible.

23 THE COURT: Mr. Mazurek.

24 MR. MAZUREK: Yes, Your Honor, just as the
25 Government has done with respect to the collection of evidence

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1 and the introduction --

2 THE COURT: I'm sorry. The jurors are here.

3 MR. MAZUREK: We will take this up later or --

4 THE COURT: Yes.

5 We just spaced the jurors out a little bit so they
6 are not on top of each other.

7 They are going to be sitting --

8 MS. LASH: Your Honor, Ms. Campbell, I'm not sure if
9 we have sworn the interpreters.

10 THE COURT: We will in front of the jurors.

11 (Pause in the proceedings.)

12 THE COURT: I also appreciate everyone honoring the
13 request to wear the mask, because I just think we can't be too
14 cautious.

15 (Pause.)

16 THE COURT: Good morning, ladies and gentlemen.

17 THE JURY: Good morning.

18 THE COURT: Please be seated.

19 Sorry for all of the confusion. My idea was to have
20 you spaced out a little bit as I mentioned in terms of the
21 COVID issues we have had. The parties are wearing masks. And
22 the only time that I am not requiring a party to wear a mask
23 is when they are questioning, and the witnesses do not have to
24 wear a mask when they are answering. We have these screens in
25 front of them.

Proceedings

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1 So, welcome.

2 And I think we are ready to go. Math is not our
3 strong suit here when it comes to organizing. I think we have
4 got it down now.

5 All right. Ms. Lash.

6 MS. LASH: Thank you, Your Honor.

7 THE COURT: We need to swear in the interpreters
8 first and then the witness.

9 THE COURTROOM DEPUTY: Yes.

10 Interpreters, could you raise your right hand
11 please?

12 (Interpreters sworn.)

13 THE COURTROOM DEPUTY: Thank you.

14 May the witness stand and raise his right hand.

15 Do you solemnly swear or affirm that the answers and
16 testimony you are about to give to the Court will be the truth
17 the whole truth and nothing but the truth?

18 THE WITNESS: Yes, I swear.

19 THE COURTROOM DEPUTY: Thank you.

20 (Witness sworn.)

21 THE COURTROOM DEPUTY: May you please state and
22 spell your name for the record.

23 THE WITNESS: Brainys Acosta.

24 THE COURTROOM DEPUTY: Thank you. You may be
25 seated.

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1 THE COURT: I'm sorry. What is your full name?

2 THE WITNESS: Brainys Alberto Acosta Pena.

3 THE COURT: Okay. You may inquire.

4 (Continued on next page.)

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Acosta Pena - direct - Lash

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1 BRAINYS ALBERTO ACOSTA PENA,

2 called as a witness, having been first duly

3 sworn/affirmed, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. LASH:

6 Q Mr. Acosta Pena, you may be seated.

7 Good morning.

8 A Good morning.

9 Q How old are you?

10 A 25.

11 Q Where do you live?

12 A Jackson Heights.

13 Q Are you employed?

14 A Yes.

15 Q What do you do for work?

16 A Barber.

17 Q Where were you born, Mr. Acosta Pena?

18 A In the Dominican Republic.

19 Q And in what year did you move to the United States?

20 A 2017.

21 Q Mr. Acosta Pena, are you familiar with an individual
22 named Anthony Abreu?

23 A Yes.

24 Q How do you know him?

25 A Because he is my cousin's husband.

Acosta Pena - direct - Lash

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1 Q What is your cousin's name?

2 A Soiry.

3 Q Are Anthony Abreu and your cousin Soiry currently
4 married?

5 A I don't know what to say there.

6 Q In what year did you first meet Anthony Abreu?

7 A 2018.

8 Q And after meeting him in 2018, how many times would you
9 say you saw him in person?

10 A About four, five times.

11 Q At what types of events would you see Anthony Abreu in
12 person?

13 A Family events, birthday parties, things of the sort.

14 Q Sitting here today, how would you describe your
15 relationship with Anthony Abreu?

16 A I don't have a relationship with him.

17 Q Mr. Acosta Pena, I would like to show you a photograph
18 that is in evidence marked as Government Exhibit 4.

19 Can you see the photograph on the screen in front of
20 you, Mr. Acosta Pena?

21 A Yes.

22 Q Who is this person?

23 A Anthony.

24 Q Mr. Acosta Pena, I would like to ask you a few questions
25 about a vehicle that you owned in 2019.

Acosta Pena - direct - Lash

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1 A Okay.

2 Q In early 2019, let's say, January of 2019, did you own a
3 car?

4 A No. No. It was in February.

5 Q In January of 2019, were you looking to purchase a car?

6 A Yes.

7 Q What kind of car were you looking to purchase?

8 A 2008 Honda Accord V6.

9 Q Why were you looking to purchase a 2008 Honda Accord V6?

10 A Because that was the car that I liked. It was my
11 favorite car.

12 Q Without telling us what you said, did you talk to anyone
13 about buying a car in early 2019?

14 A Yes.

15 Q Who did you talk to?

16 A Anthony.

17 Q And why did you talk to Anthony about buying a car?

18 A Well, because he had friends or, rather, a friend that
19 used to buy vehicles at auction, so it occurred to me to ask
20 him.

21 Q I would like to show you another photograph that's marked
22 for identification as Government Exhibit 459.

23 MS. LASH: I will ask Ms. Reed, could you flip
24 through the five pages of Government Exhibit 459 for the
25 witness.

Acosta Pena - direct - Lash

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1 Q Can you see those photographs, Mr. Acosta Pena?

2 A Yes.

3 Q Do you recognize these photographs?

4 A Yes.

5 Q And what is being photographed in these pictures?

6 A The car that I bought.

7 Q And what type of car is it?

8 A A 2003 Honda Accord V6.

9 Q Did you take these photographs?

10 A Yes.

11 Q Are they fair and accurate depictions of the Honda Accord
12 that you photographed?

13 A Yes.

14 MS. LASH: Your Honor, the Government offers
15 Government Exhibit 459 into evidence.

16 THE COURT: 459 will be received.

17 (Government's Exhibit 459 received in evidence.)

18 MS. LASH: Ms. Campbell, if we can dim the lights
19 just because I noticed some of the jurors don't have screens
20 outside the box.

21 THE COURTROOM DEPUTY: I'm sorry, I'm pressing the
22 button but it is not working.

23 MS. LASH: Just one moment.

24 (Pause.)

25 THE COURTROOM DEPUTY: I'm sorry, Ms. Lash, it is

Acosta Pena - direct - Lash

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1 not dimming as it should.

2 MS. LASH: No problem, Ms. Campbell.

3 Could I, Your Honor, turn the screen here for the
4 jurors so they could have a clear view?

5 THE COURT: Yes.

6 Okay. Everyone can see the exhibit?

7 JURORS: Yes.

8 THE COURT: Okay. And for the jurors in the front,
9 if you just turn a bit to your right, you can see it on that
10 screen too.

11 MS. LASH: I do have paper copies, Your Honor, if
12 that would be easier.

13 THE COURT: Can everyone see it?

14 THE JURY: Yes.

15 THE COURT: Okay.

16 BY MS. LASH:

17 Q Mr. Acosta Pena, looking at the first page of Government
18 Exhibit 459, what kind of car is this?

19 A It's a 2003 Honda Accord V6.

20 Q And what color is the car?

21 A White.

22 MS. LASH: Ms. Reed, if we could go to the second
23 page.

24 Q Is this a picture of the same car?

25 A Yes.

Acosta Pena - direct - Lash

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1 MS. LASH: And the third page, Ms. Reed.

2 Q Is this another photograph of that same car?

3 A Yes.

4 MS. LASH: The fourth page, Ms. Reed.

5 Q On the right side, the white car, is that a photograph of
6 the same Honda Accord?

7 A Yes.

8 Q I'm sorry. I said the right side. I meant the left side
9 of the photograph.

10 A Yes.

11 Q What kind of car is partially shown on the right side of
12 the photograph?

13 A A Honda.

14 Q Who did that car belong to?

15 A Anthony's.

16 MS. LASH: And the fifth page, Ms. Reed.

17 Q What's pictured here, Mr. Acosta Pena?

18 A Some rims.

19 MS. LASH: We can take that down. Thank you.

20 Q I would like to ask you some questions about your
21 purchase of that car.

22 A Okay.

23 Q Who sold you the Honda Accord?

24 A Anthony.

25 Q How did you communicate with Anthony about the purchase

Acosta Pena - direct - Lash

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1 of the car?

2 A I communicated with him through SnapChat.

3 Q What is SnapChat, Mr. Acosta Pena?

4 A It's an application where you can share notes and videos
5 and you can also communicate with other people.

6 Q Did you go see the Honda Accord in person?

7 A Yes.

8 Q On what date did Anthony contact you about seeing the car
9 in person?

10 A The 16th. Sorry. February 13th, 2019.

11 Q After receiving the message from Anthony about seeing the
12 car, what did you do?

13 A I went to see it.

14 Q On what date did you go see the car?

15 A February 16th.

16 Q Where did you go see the car in February -- and I'm
17 sorry, what year was this?

18 A 2019.

19 Q Where did you go see the car on February 16th of 2019?

20 A His house.

21 Q I would like show you what has been marked for
22 identification as Government Exhibit 567.

23 MS. LASH: This is just for the witness only.

24 Q When you can see the photos on the screen, I will ask Ms.
25 Reed to page through them.

Acosta Pena - direct - Lash

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1 There are four photographs here. Do you recognize
2 this location?

3 A Yes.

4 Q And what location is this?

5 A Where Anthony used to live.

6 Q And is this the location where you saw the Honda Accord
7 on February 16th of 2019?

8 A Yes.

9 MS. LASH: Your Honor, apologies.

10 Q Do these photographs fairly and accurately depict the
11 place where you saw the car?

12 A Yes.

13 MS. LASH: Your Honor, the Government offers
14 Government Exhibit 567 into evidence.

15 THE COURT: 567 will be received.

16 (Government's Exhibit 567 received in evidence.)

17 BY MS. LASH:

18 Q Looking at the first photograph on the screen in front of
19 you, Mr. Acosta Pena, what do we see in the middle of the
20 photograph?

21 A The driveway of the house where he lived.

22 Q And looking again in the middle of the photograph, you
23 see vehicles parked inside that driveway. What location is
24 that?

25 A That's the parking lot where Anthony kept the Honda.

Acosta Pena - direct - Lash

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1 Q I'd also like to show you one more photograph.

2 MS. LASH: This is in evidence, it is Government
3 Exhibit 1001.

4 Q What is this a photograph of, Mr. Acosta Pena?

5 A Several cars on the parking lot.

6 Q And do you recognize this location?

7 A Yes.

8 Q And what is it?

9 A The parking lot where the car was.

10 Q Using this photograph, can you describe where the white
11 Honda Accord was parked when you saw it on February 16, 2019?

12 A On the left side, right here, behind the black car that
13 is there on the left.

14 Q Thank you.

15 MS. LASH: We can take this down, Ms. Reed.

16 Q When you arrived on February 16th of 2019 to look at the
17 car, who was there?

18 A Anthony.

19 Q Was anyone else there?

20 A No.

21 Q What condition was the Honda Accord in?

22 A Well, inside it did not have a radio or the speakers or
23 the lights, the trunk was disorganized, the speakers were
24 missing, and the trunk was damaged.

25 Q Can you tell me about the exterior of the Honda Accord?

Acosta Pena - direct - Lash

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1 A Well, on the exterior, the Honda inscription was missing
2 three letters, and on the rear right-hand side of the car
3 there was rust.

4 Q Did the car have a license plate?

5 A No.

6 Q Did you take any photographs or videos of this car on
7 February 16th of 2019?

8 A Yes.

9 Q I'd like to show you what's marked for identification as
10 Government Exhibit 319.

11 MS. LASH: I will ask Ms. Reed to pull up 319 and
12 play the short video for the witness, please.

13 (Video playing.) (Video stopped.)

14 Q Do you recognize this video, Mr. Acosta Pena?

15 A Yes.

16 Q Did you take this video?

17 A Yes.

18 Q Does it fairly and accurately depict the Honda Accord on
19 February 16th of 2019?

20 A Yes.

21 MS. LASH: Your Honor, the Government offers
22 Government Exhibit 319 into evidence.

23 THE COURT: 319 will be received.

24 (Government's Exhibit 319 received in evidence.)

25 MS. LASH: I'd like to publish this video to the

Acosta Pena - direct - Lash

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1 jurors.

2 (Exhibit published.)

3 MS. LASH: Ms. Reed, if you could play this video.

4 (Video playing.)

5 MS. LASH: Ms. Reed, if we could go to eight seconds
6 in this video, please.

7 (Video playing.)

8 Q Mr. Acosta Pena, the car in the background, what car was
9 that?

10 A The Honda that belonged to Anthony.

11 Q And what color was that Honda?

12 A Gold.

13 Q Why did you take this video of the white Honda Accord on
14 February 16th of 2019?

15 A Because I was excited since it was my first car.

16 Q Did you make a decision whether or not you would purchase
17 that car?

18 A Yes.

19 Q How much did you agree to pay for the car?

20 A 2,300.

21 Q Did you pay the full \$2,300 for the Honda Accord?

22 A No.

23 Q What happened?

24 A I gave him \$1,700 cash. And then for the remainder, he
25 brought another Honda to the parking lot at my house and he

Acosta Pena - direct - Lash

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1 parked it there as credit.

2 MS. LASH: Ms. Reed, if we could pull up Government
3 Exhibit 459, page 4. That's in evidence.

4 (Exhibit published.)

5 Q Mr. Acosta Pena, again, looking at the right side of this
6 photograph, is that the car that Anthony parked at your house?

7 A Yes.

8 Q Mr. Acosta Pena, what, if any, paperwork did you receive
9 in the purchase of the car?

10 A The title.

11 Q And whose name was on the title that you received?

12 A Anthony's.

13 Q When did you take possession of the car?

14 A When he brought it to my house.

15 Q And when approximately did that happen?

16 A About a week after I saw it.

17 Q Now, I'd like to show you another video, Mr. Acosta Pena.
18 This is marked for identification as Government Exhibit 317.

19 MS. LASH: And Ms. Reed, for efficiency-sake, I'm
20 going to play Government Exhibit 317 and another video marked
21 for identification as Government Exhibit 318.

22 (Video playing.)

23 Q Mr. Acosta Pena, do you recognize what has been marked as
24 Government Exhibit 317, the first video clip that you saw?

25 A Yes.

Acosta Pena - direct - Lash

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1 Q What is this a video of?

2 A It's a video of the car I bought.

3 Q Did you take this video?

4 A Yes.

5 Q Now, Government Exhibit 318, the second video that you
6 viewed, do you recognize that video?

7 A Yes.

8 Q And what is shown in that video?

9 A The white Honda.

10 Q Did you also take the video in Government Exhibit 318?

11 A Yes.

12 Q Are Government Exhibits 317 and 318 fair and accurate
13 depictions of the white Honda Accord?

14 A Yes.

15 MS. LASH: Your Honor, the Government offers
16 Government Exhibits 317 and 318 into evidence.

17 THE COURT: All right. They will be received.

18 (Government's Exhibits 317 and 318 received in
19 evidence.)

20 MS. LASH: Ms. Reed, if we could put Government
21 Exhibit 317 on the screen, please, and Government Exhibit --
22 before we get to 318, for the witness only.

23 Q Can I show you one more photograph, Mr. Acosta Pena, this
24 is marked as Government Exhibit 317-A.

25 Do you recognize Government Exhibit 317-A?

Acosta Pena - direct - Lash

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1 A Yes.

2 Q Is this a still capture for a paused photograph from
3 Government Exhibit 317?

4 A Yes.

5 MS. LASH: Your Honor, the Government offers
6 Government Exhibit 317-A into evidence.

7 THE COURT: It will be received.

8 (Government's Exhibit 317-A received in evidence.)

9 MS. LASH: Ms. Campbell, if we can go Government
10 Exhibit 317-A to the jurors. Thank you.

11 Q Mr. Acosta Pena, you said this is a screen capture of the
12 video we just watched; is that right?

13 A Yes.

14 Q And what do you notice about the logo of the car in this
15 screen capture?

16 A There are letters missing. There are three letters
17 missing.

18 Q Mr. Acosta Pena, when did you take the video in
19 Government Exhibit 317?

20 A I believe it was on May 12th. I don't remember the year,
21 but it was on May 12th.

22 Q And Mr. Acosta Pena, do you recall testifying before a
23 grand jury in this matter?

24 A Yes.

25 Q I'd like to show you a transcript of your testimony

Acosta Pena - direct - Lash

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1 before the grand jury to see if it refreshes your recollection
2 as to the date.

3 A Okay.

4 MS. LASH: Ms. Reed, if we can pull up what has been
5 marked for identification as 3500-BA-T8 and go to page 23.

6 (Exhibit published.)

7 MS. LASH: And Madam Interpreter, if you could read
8 to the witness from lines 23.

9 THE INTERPRETER: Could that be blown up for a bit
10 for the interpreter.

11 MS. LASH: I have a paper copy, Your Honor, if I
12 could approach.

13 THE INTERPRETER: Thank you.

14 What were the lines for the interpreter, please?

15 MS. LASH: Page 23, starting at line 20 through page
16 24, ending at line 2, please.

17 MR. MAZUREK: Your Honor, just for the record, this
18 will be just to the witness.

19 THE COURT: Yes, it is.

20 BY MS. LASH:

21 Q Mr. Acosta Pena, on what date did you take the video that
22 we viewed in Government Exhibit 317?

23 A May 22, 2019.

24 I apologize to everyone, because it's been so many
25 years and, well, you know.

Acosta Pena - direct - Lash

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1 Q Now, I'd like to show you what's in evidence as
2 Government Exhibit 318.

3 MS. LASH: Ms. Reed, if we could play this short
4 clip for the jurors as well.

5 (Video playing.) (Video stopped.)

6 Q On what date did you take the video in Government Exhibit
7 318?

8 A May 22, 2019.

9 Q And the video that's -- I'm sorry, the car that is
10 depicted in Government Exhibits 317 and 318, who did you
11 purchase that car from?

12 A From Anthony.

13 Q And do these videos depict the same vehicle that you saw
14 on February 16th of 2019?

15 A Yes.

16 Q Do you still own the Honda Accord, Mr. Acosta Pena?

17 A No.

18 Q What did you do with the car?

19 A I sold it.

20 Q How did you advertise it for sale?

21 A I advertised it on a website called Offer Up.

22 Q What is Offer Up?

23 A It's a site where you can buy and sell all different
24 kinds of items.

25 Q Like Ebay?

Acosta Pena - direct - Lash

1379

1 A Yes. It's like --

2 Q I'd like to show you what's in evidence as --

3 MS. LASH: My apologies. I missed the answer from
4 the interpreter.

5 A Yes. It's like Ebay and Amazon, yes.

6 Q Thank you.

7 Mr. Acosta Pena, I would like to show you what's in
8 evidence as Government Exhibit 459.

9 Is this the car that you advertised on Offer Up?

10 A Yes.

11 Q And who did you purchase this car from?

12 A From Anthony.

13 Q Did you make any changes to the car after you purchased
14 it?

15 A Yes.

16 Q What did you do?

17 A I changed the rims.

18 Q Why did you do that?

19 A Because I liked those rims better.

20 MS. LASH: Thank you, Your Honor. No further
21 questions.

22 THE COURT: Mr. Kousouros, do you have anything?

23 MR. KOUSOUROS: I do not, Your Honor.

24 THE COURT: Okay. Do you, Mr. Mazurek?

25 MR. MAZUREK: Yes, Your Honor.

Acosta Pena - cross - Mazurek

1380

1 CROSS-EXAMINATION

2 BY MR. MAZUREK:

3 Q Good morning, Mr. Acosta Pena.

4 A Good morning.

5 Q My name is Henry Mazurek, and I represent the defendant
6 Zhe Zhang in this case.

7 And we've never met before; correct?

8 A Uh-hum. No, never.

9 Q You just have to answer out loud so that the reporter can
10 record your answers. Okay?

11 A Okay (in English.)

12 Q Have you ever heard the name Zhe Zhang before?

13 A No.

14 Q Have you ever met Zhe Zhang?

15 A No.

16 Q You were asked questions on direct examination about a
17 fellow by the name of Anthony Abreu; right?

18 A Yes.

19 Q And this is someone who you're not related by blood but
20 you're related because your cousin married him; correct?

21 A Yes.

22 Q Okay. And I think you -- correct me if I am wrong, but I
23 think you testified on direct examination that you came from
24 the Dominican Republic in or about 2017 or 2018; is that
25 right?

Acosta Pena - cross - Mazurek

1381

1 THE INTERPRETER: Interpreter's correction.

2 A 2017.

3 Q Okay. And had you met Mr. Abreu before that in the
4 Dominican Republic?

5 A He traveled there with my cousin. I just saw him there.
6 That was it.

7 Q Okay. So the first time that you -- well, when he
8 traveled there with your cousin, you saw him in family
9 gatherings, I imagine, in the Dominican Republic?

10 A Yes, I saw him one time.

11 Q Okay. And then you saw him again when you moved to New
12 York?

13 A Yes.

14 Q And you moved to the area in Flushing, Queens?

15 A Yes.

16 Q And you lived there with your mother?

17 A Yes.

18 Q Okay. And, so, when you moved to Flushing, you learned
19 that Mr. Abreu also lived nearby in the Corona neighborhood of
20 Queens?

21 A Yes.

22 Q And, so, you got to see him a little bit more than in the
23 Dominican Republic once you moved to Queens; right?

24 A I didn't see him that many times.

25 Q But at least several times; is that right?

Acosta Pena - cross - Mazurek

1382

1 A The four to five times that I saw him were at family
2 get-togethers and at parties, things like that.

3 MR. MAZUREK: I'm going show you -- just for the
4 witness -- what has been marked for identification as
5 Government Exhibit 397, if we can put that on the screen.

6 And for the Government, it should be on the flash
7 drive.

8 MS. LASH: Your Honor, if we can have a minute to
9 review.

10 THE COURT: Yes.

11 MS. LASH: Objection to relevance, Your Honor.

12 MR. MAZUREK: To establish the relationship with
13 Pena, Your Honor.

14 THE COURT: With Mr. Abreu?

15 MR. MAZUREK: Yes.

16 THE COURT: All right. I will allow him to identify
17 it.

18 BY MR. MAZUREK:

19 Q Okay. So if you could look on your screen, Mr. Acosta
20 Pena?

21 Is it on your screen?

22 A Yes.

23 Q Great.

24 Do you recognize the individual shown in that
25 photograph?

Acosta Pena - cross - Mazurek

1383

1 THE COURT: I think just the man --

2 A Yes.

3 THE COURT: -- identified in the photograph.

4 Q And specifically, do you see Mr. Abreu in that
5 photograph?

6 A Yes.

7 (Continued on next page.)

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Acosta Pena - cross - Mazurek

1384

1 (Continuing.)

2 BY MR. MAZUREK:

3 Q And do you see yourself?

4 A Yes.

5 MR. MAZUREK: Your Honor, I move for admission of
6 Z-97.

7 THE COURT: All right.

8 But can you tell me, is Mr. Abreu, where is he in
9 the photograph? Is he on the right or on the left or in the
10 middle?

11 THE WITNESS: On the right.

12 THE COURT: In the pink shirt?

13 THE WITNESS: Yes.

14 THE COURT: And you are where?

15 THE WITNESS: On the left side the white shirt.

16 THE COURT: All right.

17 Z-97 will be received.

18 MR. MAZUREK: Thank you, Your Honor.

19 (Defendant's Exhibit Z-97 was received in evidence.)

20 Q And is your cousin that we've been talking about, Soiry,
21 also in this photograph?

22 A Yes.

23 Q And she's the woman in the middle; is that right?

24 A Yes.

25 Q So, again, you would see Mr. Abreu at these kinds of

Acosta Pena - cross - Mazurek

1385

1 family events like a birthday party that's depicted in the
2 photograph, right?

3 A Yes.

4 Q And through these meetings, you learned that Mr. Abreu
5 was someone who was interested in automobiles and cars, right?

6 A Yes.

7 Q He was someone who had access to buy and sell cars; is
8 that fair?

9 A Yes.

10 Q And -- I have another question.

11 THE COURT: You can take down the photograph.

12 MR. MAZUREK: I'm sorry?

13 THE COURT: I said you can take down the exhibit.

14 MR. MAZUREK: You can take down that photograph.

15 Q You were asked questions on direct examination about a
16 couple of cars, the one that you purchased, right? The white
17 Honda, right?

18 A Yes.

19 Q And before you saw that car, you were interested in
20 purchasing a Honda Accord, right?

21 A Yes.

22 Q Did you always like Honda Accords even when you were back
23 in the Dominican Republic?

24 A Yes.

25 Q And is it fair to say that the Honda Accord is a car that

Acosta Pena - cross - Mazurek

1386

1 is very poplar in the Dominican Republic?

2 MS. LASH: Objection.

3 THE COURT: Yeah, I'll sustain the objection.

4 MR. MAZUREK: Okay.

5 Q But, anyway, you were interested in that particular brand
6 of car back in 2019, right? A Honda Accord, I'm sorry?

7 A Yes.

8 Q And you also testified about going to Mr. Abreu's house
9 in Corona, right, back then?

10 A Yes.

11 Q And I think we were looking at some photographs where
12 there seemed to be like a parking lot in the back of the house
13 where he lived, right?

14 A Yes.

15 MR. MAZUREK: And if we can put on the screen what's
16 already been admitted as GX Government Exhibit 1001, page two.

17 Q Okay. So, you see what's on the screen, Mr. Acosta Pena?

18 A Yes.

19 Q And is this the parking lot that was in the back of the
20 building where Mr. Abreu lived in 2019?

21 A Yes.

22 Q Okay. And there are a number of cars in this video -- on
23 this picture. Did you take this photograph?

24 A No.

25 Q But you recognize the lot as the one in the back of the

Acosta Pena - cross - Mazurek

1387

1 Abreu home?

2 A Yes.

3 Q And the times that you visited the Abreu house, I mean,
4 were there also lots of cars in that lot?

5 A I wouldn't be able to say because I would come in using
6 the front door. I never came in through the parking lot.

7 Q Okay. So the only times you went to the parking lot was
8 to inspect the cars or the car that you were looking at?

9 A Yes.

10 Q Okay. And did you know whether Mr. Abreu owned a bunch
11 of or had access to a bunch of Hondas back in 2019?

12 THE INTERPRETER: During 2019?

13 MR. MAZUREK: Yes.

14 THE INTERPRETER: Thank you.

15 A I don't know.

16 Q Okay. You said that he himself had a gold Honda that was
17 parked at your house for awhile?

18 A Yes.

19 Q And then he's also the one who said he found this white
20 Honda for you, right?

21 A Yes.

22 Q Did you see him with any other Hondas?

23 A No.

24 Q And talking about the car that you eventually purchased
25 from him, you said that you were -- were you talking to him

Acosta Pena - cross - Mazurek

1388

1 about wanting to by a honda Accord sometime in January of
2 2019?

3 A Yes.

4 Q Okay. And did you have a specific car in mind?

5 A Yes.

6 Q And what kind of car was that?

7 A It was a Honda Accord, but a different model.

8 Q Okay. Was it a 2010 V6 Honda Accord?

9 A Yes.

10 Q And you had found it online or sent a picture to
11 Mr. Abreu?

12 A Yes, I sent him a picture.

13 Q Okay. And, again, this was sometime in January of 2019,
14 right?

15 A Yes.

16 Q Now, you didn't purchase the vehicle in the photo you
17 sent to Mr. Abreu, right?

18 A No.

19 Q Instead, sometime later, Mr. Abreu suggested that he had
20 access to another vehicle, another Honda Accord?

21 A Yes.

22 Q Now, you don't know where Mr. Abreu obtained the Honda
23 Accord that you ultimately purchased, right?

24 A I don't know.

25 Q And you don't know when he had that car -- when he first

Acosta Pena - cross - Mazurek

1389

1 got that car, I should say?

2 A I don't know.

3 Q Okay. You first saw the car on or about February 16th of
4 2019, is that right?

5 A Not on the sixth.

6 Q The 16th? I'm sorry.

7 A Yes.

8 Q Okay. So the record is clear, it's February 16th when
9 you first saw the car?

10 A Yes.

11 Q And you don't know how much in advance of February 16th
12 Mr. Abreu had the car?

13 A I don't know.

14 Q And the first time you said you saw the car was at this
15 parking lot that's on the screen, right, GX 1001?

16 A Yes.

17 Q Okay.

18 MR. MAZUREK: If we could take that photograph down
19 and put on the screen what's already been admitted into
20 evidence as Government Exhibit 319. It's a video. And if we
21 could play the short video.

22 (Video played.)

23 Q So, Mr. Acosta Pena, you took that video, right?

24 A Yes.

25 Q And where did you take that video?

Acosta Pena - cross - Mazurek

1390

1 A At the parking lot where he lived.

2 Q Okay. Was that the first time that you saw the car?

3 A Yes.

4 Q Did you agree to purchase the car on that day?

5 A Yes.

6 Q Did you take the car from Mr. Abreu to your house on that
7 day?

8 A No.

9 Q Was there a reason why you didn't just take it on that
10 day?

11 A I did not have a license and that is why I did not want
12 to drive it home.

13 Q Okay. You intended to get a license because you're
14 buying a car, right?

15 A Yes.

16 Q And you, in fact, did take the car with you to your house
17 about a week or so later; is that right?

18 A Yes.

19 Q And you still did not have a license at that point in
20 time, right?

21 A Right.

22 Q So did Mr. Abreu drive you to your house with the car?

23 A Yes.

24 Q Okay. And you didn't do that on February 16th, you did
25 that sometime a week or so later, right?

Acosta Pena - cross - Mazurek

1391

1 A Yes.

2 Q Do you know whether there was an issue about how the car
3 was working on February 16th is the reason why you didn't take
4 it on that date?

5 A The car had small issue and I also did not have a license
6 to be able to drive it.

7 Q Do you know that what that issue was that the car had?

8 A It was, like, a bad sparkplug. It was something simple
9 that we -- something we replaced later.

10 Q So the car was just not -- it was not working at that
11 point in time on February 16th?

12 A The car did start and it was drivable, I just didn't want
13 to bring it with me on the 16th of February.

14 Q Okay. But what about, you said there was a sparkplug
15 issue?

16 A Yes.

17 Q Okay. So it was just you didn't have a license and,
18 also, you wanted to have the car repaired before you took it
19 away?

20 A No. I repaired the car myself.

21 Q You later repair --

22 A Once the car was parked at my house, I replaced the
23 broken sparkplug. That was it.

24 Q Okay. And you learned about the broken sparkplug on the
25 16th from Mr. Abreu, correct?

Acosta Pena - cross - Mazurek

1392

1 A It was on my own. I realized it myself.

2 Q You inspected the car and realized that there was that
3 problem on the 16th?

4 A Yes.

5 Q Okay. And I think you testified on direct, was there --
6 that was no drivers -- there was no license plate on the car
7 when you saw it on the 16th of February?

8 A No.

9 Q So when you took the car a week later from Abreu's
10 parking lot to your house, did you drive it without a license
11 plate?

12 A No, he put a license plate on it to be able to bring it
13 to my home.

14 Q And was that a Pennsylvania license plate?

15 A Yes.

16 Q And was it a paper plate or was it a metal plate?

17 A Metal.

18 Q Now, when you inspected the car on February 16th, you
19 were talking about, I think on direct examination, the
20 condition it was in, if you remember?

21 A Yes.

22 Q And you were first asked about the interior of the car,
23 correct?

24 A Yes.

25 Q What was the style of the interior of the car, if you

Acosta Pena - cross - Mazurek

1393

1 remember?

2 A Well, the car was missing the speakers, the radio, the
3 lights in the interior, and then the trunk was disorganized
4 and it was also missing speakers. That was it.

5 Q Would you say that the car was clean or dirty?

6 A Dirty.

7 Q And when you say the trunk was disorganized, was there
8 damage to the trunk?

9 A No, it was also, like -- everything was out of place.
10 Everything had to be back -- to be put back in place.

11 Q Okay. And you said that the lights weren't working.
12 Which lights were not working in the car?

13 A Interior lights.

14 Q Okay. So when you got in the car, there would be no --
15 there's no lights when you opened or closed the doors?

16 A Exactly.

17 Q All right. Now, the exterior of the car, I think you
18 were asked questions about that as well, right?

19 A Yes.

20 Q Did you notice marks on the car, on the exterior?

21 A The car was missing three letters.

22 Q Okay. Yeah, you testified to that on direct about that.
23 You're talking about the Accord emblem, the name Accord on the
24 bumper, or on the trunk? I'm sorry.

25 A Yes, yes.

Acosta Pena - cross - Mazurek

1394

1 Q And what three letters were missing?

2 A A-C-C.

3 Q And that's one of the -- I guess the thing that you
4 noticed the most about the exterior of the car?

5 A That and only that it had a small rusted area in the
6 back. That's it.

7 Q Where on the back?

8 A The right rear door, like, on the fender line in the
9 back.

10 Q Okay. And that's the right -- so it's the passenger rear
11 door had rust on the bottom of the fender by the fender line?

12 A Yes.

13 Q Other than that, you didn't notice, when you were looking
14 around the car, any problems with the exterior, any damage I
15 should say?

16 A Exactly.

17 Q Okay. Now, you took the car sometime is it, I guess, the
18 week of February 23rd of 2019?

19 A Yes.

20 Q And before we get to that, one other question I had about
21 the exterior of the car. I asked you this question about the
22 interior. The exterior, would you say it was clean or dirty
23 when you saw it?

24 A Dirty.

25 Q I'm sorry?

Acosta Pena - cross - Mazurek

1395

1 A Dirty.

2 Q Oh, thank you. When you say dirty, that means it looked
3 like it hadn't been washed in a while; is that what you mean?

4 A Yes.

5 Q Thank you. So you took the car back to your house, or
6 the house where you were living, during the week of
7 February 23rd of 2019; is that right?

8 A Yes.

9 Q And how long did you own that car from the time that you
10 had it at your house from February 23rd until you sold it?

11 A About seven or eight months.

12 Q Okay. And you ended up selling it because you never
13 obtained your driver's license; is that right?

14 A Because of the insurance. Insurance was very high around
15 there.

16 Q Yeah. So you couldn't afford the car insurance and you
17 decided that, you know, there's no point in keeping the car?

18 A Yes.

19 Q Now, you said you made some changes to the car before you
20 sold it, right?

21 A Yes, I made one change.

22 Q Which was just the rims of the car?

23 A Yes.

24 Q Did you have to tinker any -- and you said you had to
25 change a sparkplug. Did you have to tinker with the engine at

Acosta Pena - cross - Mazurek

1396

1 all?

2 A No, only the sparkplug.

3 Q Okay. Now, you were also shown videos on direct
4 examination that you took sometime in May of that year, in
5 2019, right?

6 A Yes.

7 Q Why did you take those videos, sir?

8 A It was my first car and I wanted to film it.

9 Q You were excited about it, right?

10 A Yes.

11 Q Okay. Now, the -- when you purchased it, you said that
12 there was -- Mr. Abreu gave you the paperwork for the car,
13 right?

14 A Yes.

15 MR. MAZUREK: And if we could put on the screen
16 what's been admitted into evidence as Government Exhibit 459.
17 And then turn to page five of that exhibit. Actually, turn to
18 page four. And could we blow up the picture of the car on
19 page four.

20 THE INTERPRETER: Your Honor?

21 THE COURT: Yes.

22 THE INTERPRETER: I'm sorry, the witness has
23 indicated he needs a short break.

24 THE COURT: All right.

25 Ladies and gentlemen, we'll take a ten-minute

Acosta Pena - cross - Mazurek

1397

1 recess.

2 (Jury exits the courtroom.)

3 THE COURT: The witness can be taken out and come
4 back.

5 (The witness steps down.)

6 (Brief recess.)

7 (Witness resumes the witness stand.)

8 (Judge takes the bench.)

9 (Jury enters the courtroom.)

10 THE COURT: I think we're ready to begin. Everyone
11 be seated.

12 MR. MAZUREK: Thank you, Your Honor.

13 And if we could put on the screen what's been
14 admitted as Government Exhibit 459 and turn to page four,
15 please.

16 BY MR. MAZUREK:

17 Q And this is the white Honda that we've been talking
18 about -- one moment --

19 Okay. So on the screen is the white Honda we've
20 been talking about that you bought, your very first car,
21 right?

22 A Yes.

23 Q And we were talking about some of the paperwork you
24 obtained when you purchased it, right?

25 A Yes.

Acosta Pena - cross - Mazurek

1398

1 Q Now, on the screen is a photograph that you, I guess,
2 posted on OfferUp, and do you see on the windshield in the
3 lower corner, there seems to be some documentation, right?

4 A Those are the papers, yes.

5 Q Okay. And that includes a New York State registration?

6 A Yes, I see that.

7 Q Was that a registration that you obtained for the
8 vehicle?

9 A No.

10 Q Okay. So that was from the prior owner?

11 A Yes, it came like that when I bought it.

12 Q Okay. Do you know who the car was registered to at that
13 point in time?

14 A No.

15 Q Okay. And you also talked about, on direct examination,
16 about title paperwork that you received for the car, right?

17 A Yes.

18 Q And you said that you reviewed that title paperwork
19 before you purchased it, right?

20 A No.

21 Q No. You never looked at it, or?

22 A I saw the title after the car was at my house.

23 Q Okay. That's when Mr. Abreu delivered it to you, right?

24 A Yes.

25 Q Okay. And when he delivered it to you, you reviewed it,

Acosta Pena - cross - Mazurek

1399

1 right?

2 A Yes, I signed it.

3 Q Okay. Because, again, you were excited, this is your
4 first car, right?

5 A Yes.

6 Q And you testified on direct examination that the previous
7 owner on the title paperwork was Anthony Abreu; is that right?

8 A Yes.

9 Q Now, before you testified here today, you had met with
10 agents from the FBI who interviewed you about this same car
11 way back in May of last year, right?

12 A Yes.

13 Q And when you met with them in May of '22, did you have
14 the title paperwork for this car?

15 A No.

16 Q And you were remembering what was on that title paperwork
17 when you interviewed with the agents back in May of '22,
18 right?

19 A Yes.

20 Q And they asked you about whose name was on the title
21 paperwork, right?

22 A Yes.

23 Q And isn't it true, Mr. Acosta Pena, that you told them
24 that you noticed that Abreu's name and signature was not on
25 the title when you interviewed with the agents in May of '22?

Acosta Pena - cross - Mazurek

1400

1 A No, it was my signature.

2 Q Yes, but you told the agents in May of '22 when they
3 asked you whether the title paperwork that you signed had
4 Abreu's name as the previous title owner, you said that you
5 noticed that Abreu's name and signature was not on the title?

6 A I did not say that. I said it was in his name.

7 MR. MAZUREK: If we could put on the screen, just
8 for the witness, Your Honor, what's been premarked for
9 identification as 3500 BAP-1, and, specifically, page two.

10 Q Is there anything that might refresh your memory,
11 Mr. Acosta Pena, of what you told the agents back in May of
12 '22?

13 A Well, did you have something to put up here then?

14 Q Would it help you -- I mean, May of '22 was a long time
15 ago. You remember meeting with the agents, right?

16 A Yes, I do, but the thing about the title, it's been
17 almost five years now and I don't have that off the top of my
18 head.

19 Q Right. So if I have a document to show you, could it
20 help maybe refresh your memory about what you said about the
21 title paperwork back in May of '22?

22 A Yes, please.

23 MR. MAZUREK: So, I'm going to ask the interpreter
24 if you could, just for the witness -- if you need us to blow
25 it up, let us know, just read the first two sentences of the

Acosta Pena - cross - Mazurek

1401

1 page that's on the witness's screen, just to the witness.

2 THE INTERPRETER: The witness's screen is currently
3 black.

4 THE COURTROOM DEPUTY: It's on now.

5 THE INTERPRETER: It's on again. Thank you.

6 THE COURT: What part do you want read?

7 MR. MAZUREK: The first two sentences. I think they
8 are highlighted, Your Honor, on the screen.

9 Q Okay. Are you ready, Mr. Acosta Pena?

10 A Yes.

11 Q So, now, does that refresh your memory that in May of '22
12 when the FBI agents interviewed you, you told them that you
13 noticed at the time that Abreu's name and signature was not on
14 the title?

15 A Well, remembering it now, yes, because it's been such a
16 long time to have this in my head and the way that you're
17 asking me the questions is really confusing me.

18 Q I'm sorry. But is the answer that -- let me try to
19 clarify the question. My question is: Isn't it true that
20 back in May of '22 when you were asked questions about the
21 title, you told the agents that you noticed that Abreu's name
22 and signature was not on the title?

23 A Yes.

24 MR. MAZUREK: I have nothing further, Your Honor.

25 THE COURT: Does the government have anything

Lash - redirect - Acosta Pena

1402

1 further?

2 MS. LASH: Very briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. LASH:

5 Q Mr. Acosta Pena, Mr. Mazurek asked you some questions
6 about the condition of the car in February of 2019; do you
7 remember that?

8 A Yes.

9 Q In what month and year did you sell the white Honda
10 Accord?

11 A Well, it's been almost five years now. It -- it might
12 have been that it was sold in September because it was left
13 parked in my yard for seven or eight months.

14 Q Mr. Acosta Pena, on your screen I'm going to show you
15 what's been marked for identification as 3500 BAP-8.

16 And, Ms. Reed, if we could just go to page 29.

17 And, Madam Interpreter, could you read, just to the
18 witness, lines through 9 through 11.

19 THE INTERPRETER: Yes.

20 MR. MAZUREK: Your Honor, objection. I don't know
21 what recollection is attempted to be refreshed here.

22 MS. LASH: Your Honor, the testimony was he can't
23 quite remember, he thinks it was around September of 2019.
24 I'm showing him his grand jury testimony in which he stated
25 the month and the year that the car was sold.

Lash - redirect - Acosta Pena

1403

1 MR. MAZUREK: We would so stipulate to that.

2 THE COURT: I will allow it.

3 MS. LASH: Madam Interpreter, it's lines 9 through
4 11.

5 THE INTERPRETER: Yes.

6 A What do you call that when you post something and then
7 you upload it again?

8 Q Yes. And, Mr. Acosta Pena, what month and year did you
9 sell the car?

10 A In November of 2019.

11 Q Have you seen the Honda Accord since you sold it in
12 November of 2019?

13 A No.

14 Q Thank you. No further questions.

15 THE COURT: All right.

16 Thank you, you can step down.

17 (The witness steps down.)

18 THE COURT: Call your next witness, please.

19 MR. PARK: Yes, Your Honor, the United States calls
20 Jonathan Diver.

21 THE COURTROOM DEPUTY: Remain standing and raise
22 your right hand, please.

23 (Continued on next page.)

24

25

Diver - direct - Park

1404

1 (Witness takes the witness stand.)

2 JONATHAN DIVER, called as a witness, having been first duly
3 sworn/affirmed, was examined and testified as follows:

4 THE COURTROOM DEPUTY: Will you please state and
5 spell your name for the record.

6 THE WITNESS: Jonathan Diver, J-O-N-A-T-H-A-N, last
7 name Diver, D-I-V-E-R.

8 THE COURTROOM DEPUTY: Thank you. You may be
9 seated.

10 THE WITNESS: Thank you.

11 DIRECT EXAMINATION

12 BY MR. PARK:

13 Q Good morning, Mr. Diver.

14 A Good morning.

15 Q Mr. Diver, where do you currently work?

16 A I'm currently employed by the Manhattan District
17 Attorney's Office in the Violent Criminal Enterprise Unit.

18 Q What is your role there?

19 A I'm an investigative analyst.

20 Q How long have you been an investigative analyst there?

21 A As an analyst with that unit, I've been there for about
22 nine years.

23 Q What are your duties and responsibilities as an
24 investigative analyst?

25 A As an analyst in that unit, I assist the assistant

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1 district attorneys and also law enforcement on cases that have
2 to deal with violent crimes such as shootings, homicides,
3 gang-related violence, gun trafficking cases, drug trafficking
4 cases, and also put together presentations for them. I assist
5 by watching surveillance videos that brought to me from law
6 enforcement. I assist by combing through social media. I
7 also assist by going through extractions that are received
8 from social media warrants or iCloud warrants, any phone
9 extractions, I also will go through those for any related
10 evidence to the case, I will listen to jail calls from time to
11 time, and, again, I put together presentations.

12 Q In your current role, did you create any presentations
13 for this case?

14 A Yes, I did.

15 Q What kind of work did you create?

16 A I created a video compilation.

17 Q Are you being paid for your work in this case?

18 A Yes, I am.

19 Q What is your rate?

20 A I'm getting paid \$100 an hour for the work and \$150 an
21 hour for testimony.

22 Q And besides creating the video compilation, were you
23 involved in any other way in this investigation?

24 A No.

25 Q Can you explain to the jury what a video compilation is?

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1 A Yeah. So what I call a video compilation is a series of
2 clips that I put together using a program called Adobe Premier
3 Pro. It's a program that allows me to insert clips from
4 various different surveillance cameras, to put them in
5 chronological order in order for the viewer to see a more
6 movie-like film.

7 Q How many video compilations have you created in your
8 career?

9 A Probably over 40.

10 Q For this case, where did you obtain the underlying
11 surveillance videos?

12 A I received the surveillance video from Detective Capo.

13 Q And, approximately, how many hours of videos did you
14 review to create the compilation video?

15 A I would say over 50 hours.

16 Q Were the underlying videos you reviewed in this case
17 labeled Government Exhibits 100 through 315?

18 A Yes.

19 Q And did you also review still captures of those
20 underlying surveillance video footage videos?

21 A Yes.

22 MR. PARK: Your Honor, may I approach the witness?

23 THE COURT: Yes.

24 (Continued on the following page.)

25

DIVER - DIRECT - MR. PARK

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1 BY MR. PARK: (Continuing.)

2 Q Mr. Diver, I just handed you what are marked for
3 identification as Government Exhibit 100A, 101A, 103A through
4 103E, 105A, 106A through 106B, 140A, 148A, 305A, 307A through
5 307F. They are 19 separate photographs.

6 Do you see those?

7 A Yes, I do.

8 Q What are they?

9 A These are still images that are taken, that are captured
10 from different surveillance cameras from this incident.

11 Q And are these still captures a fair accurate captures of
12 the surveillance video footage that you reviewed?

13 A Yes.

14 MR. PARK: Your Honor, the Government offers what
15 are marked as Government Exhibit 100A, 101A, 103A through
16 103E, 105A, 106A through 106B, 140A, 148A, 305A, and 307A
17 through 307F into evidence.

18 THE COURT: All right. They'll be received.

19 (Government Exhibits 100A, 101A, 103A through 103E,
20 105A, 106 through 106B, 140A, 148A, 305A, and 307A through
21 307F, were received in evidence.)

22 BY MR. PARK:

23 Q I know you briefly explained what a video compilation is.

24 But can you tell the jury what you did once you
25 received the underlying videos?

DIVER - DIRECT - MR. PARK

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1 A Yes. So once I received the underlying videos, I go
2 through each individual video from start to finish to analyze
3 them and to review them in its entirety. From there, I'll cut
4 or clip certain portions from different surveillance cameras
5 and put them into Adobe Premiere Pro, a program, which allows
6 me to clip throughout different surveillance cameras to put in
7 chronological order.

8 Q And how did you know how to put the videos in
9 chronological order?

10 A I start with using the timestamps that are available on
11 each video. Some timestamps, sometimes they are off by a
12 couple of minutes, fast or slow. So I would then have to
13 figure out what the difference is in time in order to line the
14 videos up correctly. The way I do that is by in this case, it
15 was vehicles I would follow from one surveillance camera into
16 the next that shows me that the video is continuous, and if
17 the video didn't have a timestamp, I know it's still the
18 following video from the previous video I inserted.

19 Q You mentioned you were trying to identify vehicles.
20 What items or individuals were you tracking while
21 reviewing the videos?

22 A While reviewing the videos, I was keeping track of a
23 white Enterprise van, a white Honda sedan, and also a white
24 Camry sedan.

25 Q And were there any videos that did not have timestamps?

DIVER - DIRECT - MR. PARK

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1 A Yes, there was.

2 Q And how did you figure out where to put them in the
3 chronological order?

4 A I used the timestamps that I knew were accurate from
5 131-01 Fowler Avenue. I used the timestamps from there to
6 figure out the continuous video that leads into the next one.

7 Q Did you use any overlay or effects while creating this
8 video compilation?

9 A Yes, I did.

10 Q What is an overlay?

11 A So in Adobe Premiere Pro, it allows you to add certain
12 effects, and one of the overlays you are able to do is a
13 highlight feature. You're able to throw onto the video itself
14 without change the underlying document, a highlight or
15 spotlight on certain individuals or vehicles or whatever you
16 may want to highlight.

17 Q And what other effects did you use?

18 A For this video compilation, I also used a zoom in feature
19 which allows the video to be zoomed in on a certain location
20 for a certain period of time. I also used the fast forward
21 feature that speeds up the video. You can speed it up or slow
22 it down. In this instance, I sped it up in certain portions
23 of the video. I also did side by side which allows you, the
24 viewer, to see what is occurring in two different video
25 cameras at the same exact time, side by side.

DIVER - DIRECT - MR. PARK

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1 And I also did picture to picture which shows an
2 overall, the background video of one camera angle while also
3 able to see a different camera angle on the bottom right-hand
4 corner.

5 Q Did any of those effects change the underlying footage?

6 A No.

7 Q An item that I handed you is a thumb drive that is marked
8 Government Exhibit 320.

9 Do you recognize that thumb drive?

10 A Yes, I do.

11 Q How do you recognize that?

12 A I recognize this because it has my initials on it and it
13 has the date that I initialed it.

14 Q And what does that thumb drive contain?

15 A This contains the video compilation I created for this
16 investigation.

17 Q And I would like to show just the jury -- just the
18 witness only --

19 THE COURT: I'm sorry, what is the exhibit number?

20 MR. PARK: Your Honor, it's Government Exhibit 320.

21 BY MR. PARK:

22 Q Do you see video on your screen there?

23 A Yes.

24 Q Is that, Government Exhibit 320, the compilation video
25 you created?

DIVER - DIRECT - MR. PARK

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1 A Yes, it is.

2 MR. PARK: Your Honor, the Government offers
3 Government Exhibit 320 into evidence.

4 THE COURT: All right. It'll be received.
5 (Government Exhibit 320, was received in evidence.)

6 MR. PARK: Your Honor, I would like to publish to
7 the jury, and if you can dim the lights.

8 (Exhibit published.)

9 MR. PARK: And just for the Court's awareness, this
10 footage does contain a portion of the shooting of the victim.

11 BY MR. PARK:

12 Q Mr. Diver, before I play the video, can you tell the jury
13 what is shown on the top left corner of the screen?

14 A Yes. So here in this surveillance video camera, camera
15 four, top left, if you see a date and time which reads
16 February 12th, 2019, Tuesday, at 12:37:17 a.m.

17 Q And how about the bottom right of the screen?

18 A And the bottom right is the -- indicates which camera
19 angle this video is taken from.

20 Q And what location does this camera angle show?

21 A This is 131-01 Fowler Avenue, right outside the karaoke
22 bar. Facing north, sorry.

23 MR. PARK: Playing Government Exhibit 320.

24 (Video recording played.)(Video recording stopped.)

25 MR. PARK: I'm pausing the video at 10 seconds.

DIVER - DIRECT - MR. PARK

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1 BY MR. PARK:

2 Q Mr. Diver, can you tell the jury what is shown in the
3 footage here?

4 A Yes. So in this freeze frame of the video, it's a
5 highlight feature that I had spoken about earlier. It's one
6 of the features that Adobe Premiere Pro allows me to insert
7 overplay over top of any video, and in this instance, I'm
8 highlighting a white Honda sedan.

9 MR. PARK: Resuming the video.

10 (Video recording played.)(Video recording stopped.)

11 MR. PARK: And pausing at 15 seconds.

12 Q Can you tell us the camera that's on the bottom right
13 corner?

14 A Yeah. So Camera 3 is, again, from one 131-01 Fowler
15 Avenue, and now we're facing the south.

16 MR. PARK: And resuming.

17 (Video recording played.)(Video recording stopped.)

18 MR. PARK: And pausing at 19 seconds.

19 Q What is shown on the top right corner of this video?

20 A At the top right corner you see the white sedan -- the
21 white Honda sedan that you had previously seen in the angle
22 before, and you will see it turn into the parking lot.

23 Q Is that the same white Honda that was under the spotlight
24 earlier?

25 A Yes.

DIVER - DIRECT - MR. PARK

1413

1 MR. PARK: Resuming.

2 (Video recording played.)(Video recording stopped.)

3 MR. PARK: And pausing the video at 30 seconds.

4 Q Which camera does this angle show? Or which location?

5 A So Camera 16, again, is from 131-01 Fowler Avenue, and
6 now we're -- this is facing west.

7 Q And what is shown on the left side of the screen there?

8 A Again, the left-hand side is the continuation of that
9 white Honda sedan.

10 MR. PARK: Resuming the video.

11 (Video recording played.)(Video recording stopped.)

12 MR. PARK: And pausing the video at 34 seconds in.

13 Q What is the camera that's shown on the bottom right?

14 A This camera is Camera 10 from 131-01 Fowler Avenue, and
15 now this is facing east.

16 Q Do you know which street?

17 A Oh, sorry, this is -- this is Fowler Avenue.

18 Q And what is shown on the top portion of the center of
19 this screen?

20 A Again, this is the continuation of the white Honda sedan.

21 MR. PARK: Resuming the video.

22 (Video recording played.)(Video recording stopped.)

23 MR. PARK: And I'm pausing the video at 48 seconds
24 in.

25 Q Can you tell us what is shown on the video here?

DIVER - DIRECT - MR. PARK

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1 A Yes. So here when you see a slide like this or a portion
2 like this, this is title slide that I inserted into the video
3 to show that there's a gap in time, and how long the gap in
4 time is from the previous clip until the next one.

5 MR. PARK: Resuming the video.

6 (Video recording played.)(Video recording stopped.)

7 MR. PARK: Pausing the video at two minutes and two
8 seconds in.

9 Q Mr. Diver, can you tell the jury what is shown on this
10 footage here?

11 A Yes. So this part of the video compilation is what I
12 described before as the side by side. On the left-hand side
13 you see it's Camera 16, which is facing west on Fowler Avenue.
14 On the right of that is Camera 3, which is facing south on
15 131st Street. And this is to show the viewer what is
16 occurring at the same time in two different camera angles.

17 Q And in both of the camera angles, what is highlighted?

18 A In both camera angles, 16 and 3, you can see the white
19 Honda sedan is highlighted in both.

20 THE COURT: Is what?

21 THE WITNESS: The white Honda sedan is highlighted
22 in both.

23 THE COURT: So is the white Honda sedan during all
24 the time, kept moving?

25 THE WITNESS: This is after the first, I guess,

DIVER - DIRECT - MR. PARK

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1 first go-around, I'll call it. The first go-around of the
2 incident location.

3 THE COURT: At one point, maybe I misunderstood you.
4 I thought you said something about pulling into a parking lot.

5 THE WITNESS: It's about to do that.

6 THE COURT: Oh, okay. Sorry.

7 MR. PARK: Resuming the video.

8 (Video recording played.)(Video recording stopped.)

9 MR. PARK: Pausing the video at three minutes and 10
10 seconds in.

11 BY MR. PARK:

12 Q Mr. Diver, besides the spotlighted white Honda sedan,
13 what other vehicle is shown moving?

14 A In both Camera 16 and Camera 3, you see a white
15 Enterprise work van.

16 Q In this compilation video, is there additional footage
17 later on showing a white Enterprise van?

18 A Yes. You'll see it highlighted in different portions of
19 the video.

20 THE COURT: Can you just clarify for the jury where
21 the white Honda is now and where the van is.

22 THE WITNESS: Yes.

23 THE COURT: Where is the white Honda?

24 THE WITNESS: The white Honda is currently backing
25 into a parking spot in the parking lot. If you're looking at

DIVER - DIRECT - MR. PARK

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1 Camera 16, in the top left, it's pulling into the parking
2 spot. And if you're looking at Camera 3, the top right, it's
3 currently backing up into the parking spot.

4 THE COURT: And where is the parking spot located?

5 THE WITNESS: It's located at the corner of 131st
6 Street and Fowler Avenue right near that column that you see.

7 THE COURT: So it's located at 133rd Street and
8 Fowler?

9 THE WITNESS: 131st Street and Fowler, the corner.

10 THE COURT: But the parking lot itself is on what
11 street?

12 THE WITNESS: I'm not exactly sure. It's the
13 corner. I'm not exactly sure what street that is.

14 THE COURT: The van is turning down what street?

15 THE WITNESS: The van is turning down Fowler Avenue.

16 THE COURT: Okay. I'm sorry, you can continue.

17 MR. PARK: Your Honor, I'll show the witness and the
18 jury what is in evidence as Government Exhibit GX52 which is a
19 map of this vicinity.

20 THE COURTROOM DEPUTY: Mr. Park are you showing him
21 the map?

22 MR. PARK: I'm plugging in.

23 BY MR. PARK:

24 Q Mr. Diver, who is shown -- what is shown is what's
25 already in evidence Government Exhibit 52. I'm zooming into

DIVER - DIRECT - MR. PARK

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1 the left bottom corner of this map.

2 Do you see it on your screen?

3 A Yes.

4 Q We were just looking at the split screen on Government
5 Exhibit 320, and you were explaining to the Court where the
6 white Honda sedan was about to park.

7 Can you explain around where on this map that was
8 happening?

9 A So if you see where 131-01 Fowler Avenue is?

10 Q Right here where my mouse is pointing?

11 A Yes. It's where the bend is at the corner of the
12 building. It's underneath the highway that's right there.

13 Q So it white below the red pin that is shown?

14 A Yes.

15 Q And where was the white Honda trying to park?

16 A Right where your arrow -- your cursor is currently, that
17 parking lot underneath the highway.

18 Q So bottom -- left and a little below to the red pin
19 there?

20 A Yes.

21 Q Underneath the highway?

22 A Yes. Underneath the highway.

23 Q Thank you.

24 MR. PARK: I'm going back to Government Exhibit 320.
25 Resuming the video from three minutes and 10 seconds.

DIVER - DIRECT - MR. PARK

1418

1 (Video recording played.)(Video recording stopped.)

2 MR. PARK: I'm pausing the video at three minutes
3 and 48 seconds in.

4 Q Mr. Diver, can you tell us what is happening on this
5 screen right here?

6 A Oh, yes. So here in the screen you can still see that
7 the white Honda sedan is highlighted in the parking lot in a
8 parking spot. In the bottom left-hand corner indicated is the
9 speed that I -- the amount of speed that I sped up the video
10 for during this timeframe.

11 Q And can you tell the jury what time is shown on the top
12 left corner of the screen?

13 A Yes. So top left, it's February 12th, 2019, at
14 12:43:58 a.m.

15 MR. PARK: Resuming the video.

16 (Video recording played.)(Video recording stopped.)

17 MR. PARK: And pausing at three minutes and 58
18 seconds in.

19 Q Can you tell the jury what is shown on the right side of
20 the video here?

21 A Yes. So now this is what I was talking to, referring to
22 as picture to picture. You see in the back, the main video is
23 capturing the camera outside of 131-01 Fowler Avenue facing
24 north, and the bottom right-hand corner is the camera outside
25 of 131-01 Fowler Avenue facing south, which is highlighting

DIVER - DIRECT - MR. PARK

1419

1 the white Honda sedan in the parking lot.

2 Q And from the video that we're about to resume, what
3 happens to that white Honda sedan that is spotlighted?

4 A It just continues to sit there, parked.

5 MR. PARK: Resuming the video.

6 (Video recording played.)(Video recording stopped.)

7 MR. PARK: And pausing the video at four minute and
8 12 seconds in.

9 Q What is spot highlighted on the left side of the video?

10 A In the top left portion of the video that is now
11 highlighted a white Enterprise work van.

12 MR. PARK: Resuming the video.

13 (Video recording played.)(Video recording stopped.)

14 THE COURT: What is happening now?

15 THE WITNESS: This is just speeding up the video
16 portion to show that the white Honda sedan has not moved from
17 that parking spot. It's sped up 100X speed.

18 THE COURT: All right. So the Honda then is still
19 in the parking lot?

20 THE WITNESS: The Honda sedan, right.

21 THE COURT: It was a Honda accord, is that right?

22 THE WITNESS: Yes.

23 THE COURT: And we saw the Enterprise van go around.
24 Was that the second time it had been around?

25 THE WITNESS: Yes. And that's the second time the

DIVER - DIRECT - MR. PARK

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1 Enterprise van has been around.

2 THE COURT: And the cars now that you see in this
3 video, what street are they parked on?

4 THE WITNESS: That street is 131st Street, and were
5 facing south.

6 MR. PARK: And we're paused at five minutes and 23
7 seconds at this time.

8 BY MR. PARK:

9 Q Mr. Diver, what is the time that is shown on the top left
10 corner of the screen?

11 A The time is 2:01:16 a.m.

12 MR. PARK: Resuming the video.

13 (Video recording played.)(Video recording stopped.)

14 MR. PARK: Pausing the video at five minutes and 42
15 seconds in.

16 Q What just happened on the screen?

17 A On the screen here now you see the video is now zoomed
18 into that particular location where the white Honda accord is
19 parked.

20 Q And why did you decide to zoom in at this time?

21 A To show movement from around the car.

22 MR. PARK: Resuming the video.

23 (Video recording played.)(Video recording stopped.)

24 MR. PARK: Pausing the video at seven minutes and 30
25 seconds in.

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1 Q Mr. Diver, what is shown in the screen now?

2 A The camera angle that you're seeing now is from inside
3 the karaoke bar at 131-01 Fowler Avenue. This is one of the
4 third floor hallway cameras.

5 Q And what is the time that is indicated on the top left
6 corner?

7 A The time says 2:29:19 a.m.

8 MR. PARK: Resuming the video.

9 (Video recording played.)(Video recording stopped.)

10 MR. PARK: And pausing the video at seven minutes
11 and 34 seconds.

12 Q Who is that individual that just turned around and faced
13 the camera in the middle of the hallway?

14 A So the individual in the direct middle with his hands
15 near his neck region is the victim in this case.

16 MR. PARK: Resuming the video.

17 (Video recording played.)(Video recording stopped.)

18 MR. PARK: And pausing the video at seven minutes
19 and 43 seconds in.

20 Q What is shown on this camera angle?

21 A Again, this is a different camera angle from inside the
22 camera karaoke bar at 131-01 Fowler Avenue. This is a
23 different camera angle that is located on the third floor.

24 MR. PARK: Resuming the video.

25 (Video recording played.)(Video recording stopped.)

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1422

1 MR. PARK: And pausing the video at eight minutes
2 and four seconds in.

3 Q Who is the individual on the very center of the screen
4 wearing a long dark coat?

5 A Again, that is the victim in this incident.

6 MR. PARK: Resuming the video.

7 (Video recording played.)(Video recording stopped.)

8 MR. PARK: Pausing the video at eight minutes and 11
9 seconds in.

10 Q What is shown on this camera angle?

11 A This camera angle, you'll see the victim exiting the
12 elevator and now this is from, again, inside the karaoke bar
13 on the first floor facing the elevator, and also facing 131st
14 Street, out the door.

15 Q And when you say, out the door, you're referring to the
16 left side of the screen there?

17 A Yes. Sorry.

18 MR. PARK: Resuming the video.

19 (Video recording played.)(Video recording stopped.)

20 THE COURT: Just so we're acclimated.

21 What street is the victim facing at this point?

22 THE WITNESS: So the victim is now currently on
23 131st Street, and this camera angle is facing north.

24 MR. PARK: And for the record, we are now paused at
25 eight minutes and 37 seconds in.

DIVER - DIRECT - MR. PARK

1423

1 MR. PARK: Resuming the video.

2 (Video recording played.)(Video recording stopped.)

3 MR. PARK: Pausing the video at 10 minutes and 59
4 seconds.

5 BY MR. PARK:

6 Q Mr. Diver, what is spotlighted on the top portion -- top
7 center portion of this video?

8 A So here is the third vehicle that I had spoken about
9 earlier, being highlighted. This is the white Camry sedan
10 that you will see in the video.

11 Q And just to be clear, that is a different white sedan
12 than that was parked earlier?

13 A Yes. The one that is parked earlier is a Honda and this
14 one is a Camry.

15 Q And based on your review and creation of this video, do
16 you also track this vehicle later on?

17 A Yes.

18 MR. PARK: And resuming the video.

19 (Video recording played.)(Video recording stopped.)

20 MR. PARK: And I'm pausing 11 minutes and two
21 seconds in.

22 Q Can you explain to the jury what is shown here?

23 A Yes. So this is indicating that the next footage that
24 you're about to see is the same timeframe, except at a
25 different camera angle. The next one will be facing the south

DIVER - DIRECT - MR. PARK

1424

1 on 131st Street instead of North.

2 Q And what incident will this alternate angle show?

3 A This will show the shooting from another angle.

4 MR. PARK: Resuming the video.

5 (Video recording played.)(Video recording stopped.)

6 MR. PARK: And pausing the video at 11 minutes and
7 10 seconds in.

8 Q Is this a split screen that is shown here?

9 A Yes, it is.

10 Q And why did you decide to place a split screen for this
11 footage?

12 A For this footage, on the left-hand side I placed it, this
13 one there so you can see what is occurring from the parking
14 lot coming towards the karaoke bar. On the right-hand side,
15 it's the closeup view of the shooting itself outside of the
16 karaoke bar.

17 MR. PARK: Resuming.

18 THE COURT: Which direction -- excuse me -- is the
19 parking lot?

20 The victim is now facing south; is that correct?

21 THE WITNESS: Yes, the victim is facing south.

22 THE COURT: Where is the parking lot? Is it south
23 of him or north of him?

24 THE WITNESS: It's south of him. It's the top
25 middle of the video on the right, and on the video on the

DIVER - DIRECT - MR. PARK

1425

1 left, you see that white Honda on the top right still parked
2 in that parking lot.

3 THE COURT: Okay.

4 BY MR. PARK:

5 Q And Mr. Diver, on the right side of the screen here where
6 my mouse is, a little bit towards the right of where the time
7 mark is, is that towards where the parking lot is?

8 A Yes, it is.

9 MR. PARK: Resuming the video.

10 (Video recording played.)(Video recording stopped.)

11 MR. PARK: Now pausing at 12 minutes and 31 seconds
12 in.

13 Q What is spotlighted on the top right portion of the
14 Camera 3 screen on the left side?

15 A So the left side Camera 3 you see now the white sedan is
16 highlighted, the white Honda Accord is highlighted again, but
17 the shooter is getting out of the passenger side door.

18 MR. PARK: Resuming the video.

19 THE COURT: Where do you see that?

20 THE WITNESS: In the Camera 3 where it is
21 highlighted --

22 THE COURT: Show where you see it getting out of the
23 door.

24 THE WITNESS: You have to go back a few seconds. If
25 you look closely, you see the door opening and an individual

DIVER - DIRECT - MR. PARK

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1 leaving the passenger side.

2 MR. PARK: So went back to 12 minutes and 26 seconds
3 mark. Resuming the video.

4 (Video recording played.)(Video recording stopped.)

5 THE WITNESS: Now is when the door is opening.

6 MR. PARK: And I'm paused at 12 minutes and 29
7 seconds in.

8 Resuming the video.

9 (Video recording played.)(Video recording stopped.)

10 THE WITNESS: And now is when that individual just
11 stepped out of the passenger seat.

12 MR. PARK: And that's 12 minutes and 31 seconds.

13 Resuming the video.

14 (Video recording played.)(Video recording stopped.)

15 MR. PARK: And pausing the video at 13 minutes and
16 29 seconds.

17 BY MR. PARK:

18 Q What is shown inside the spotlight on the top right
19 portion of Camera 3 on the left side?

20 A So you see the white Honda Accord has left the parking
21 spot that it was in and is about to turn onto Fowler Avenue.

22 Q And what is shown on the right side of the scene?

23 A The right-hand side you can see the white Honda Accord in
24 the top left highlighted leaving that parking spot again, and
25 also, the shooter fleeing, heading south on 131st Street.

DIVER - DIRECT - MR. PARK

1427

1 MR. PARK: Resuming the video.

2 (Video recording played.)(Video recording stopped.)

3 MR. PARK: And now pausing the video at 13 minutes
4 and 35 seconds.

5 Q Who is about to be shown in this footage?

6 A On this footage, you will see the white Toyota Camry that
7 continues to follow the white Honda Accord, post-shooting.

8 Q And is this after the shooting?

9 A Yes, it's after the shooting.

10 Q And based on your review, where is the victim at this
11 point?

12 A This van that is parked directly in front of the karaoke
13 bar, it's on the other side of it near the passengers front.

14 MR. PARK: Resuming the video.

15 (Video recording played.)(Video recording stopped.)

16 MR. PARK: And pausing the video at 14 minutes and
17 29 seconds.

18 Q Which car is spotlighted in the center of the screen?

19 A This is the white Toyota Camry.

20 MR. PARK: Resuming the video.

21 THE COURT: What happened just before that?

22 THE WITNESS: So the video goes back to show the
23 continuation of the shooter fleeing and getting into the white
24 Honda Accord on Fowler Avenue.

25 THE COURT: So the shooter got into the white --

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1 THE WITNESS: Honda Accord.

2 THE COURT: -- on Fowler?

3 THE WITNESS: Yes.

4 THE COURT: And this car that you now have in the
5 video, the Camry, what is that doing?

6 THE WITNESS: That is now continuing to follow the
7 white Honda Accord east on Fowler.

8 MR. PARK: Resuming the video.

9 (Video recording played.)(Video recording stopped.)

10 MR. PARK: Now pausing the video at 14 minutes and
11 36 seconds in.

12 Q Which location is shown on this camera angle?

13 A So this is the AC Appliances location which is at 131-31
14 Fowler Avenue. This camera angle is facing west.

15 Q And what street is this?

16 A This is Fowler Avenue.

17 Q And what are we about to see on this footage here?

18 A You're about to see the continuation of the white Honda
19 Accord fleeing, followed by the white Toyota Camry following
20 that vehicle.

21 MR. PARK: Resuming the video.

22 (Video recording played.)(Video recording stopped.)

23 MR. PARK: Pausing the video at 14 minutes and 43
24 seconds.

25 Q What is spotlighted on the top center portion of this

DIVER - DIRECT - MR. PARK

1429

1 screen?

2 A Here you see the white Honda accord heading east on
3 Fowler Avenue.

4 MR. PARK: Resuming the video.

5 (Video recording played.)(Video recording stopped.)

6 MR. PARK: Pausing the video at 15 minutes and four
7 seconds in.

8 Q What is spotlighted on the top center portion of this
9 screen?

10 A So here at this portion, you see the white Toyota Camry
11 heading east, continuing to follow white Honda Accord.

12 MR. PARK: Resuming the video.

13 (Video recording played.)(Video recording stopped.)

14 Q And now 15 minutes and six seconds in, which location is
15 shown in this camera angle?

16 A So this is from the same location, 131-31 Fowler Avenue.
17 This is now showing the video east on Fowler.

18 Q And is that Fowler Avenue on the screen?

19 A Yes, it is.

20 Q And what are we about to see on the footage?

21 A You're about to see the continuation of the white Honda
22 Accord freeing, followed by the white Toyota Camry continuing
23 to follow.

24 MR. PARK: Resuming the video.

25 (Video recording played.)(Video recording stopped.)

DIVER - DIRECT - MR. PARK

1430

1 MR. PARK: Pausing the video at 15 minutes and 33
2 seconds in.

3 Q What location is shown on this camera?

4 A This is the BP gas station which is located at 49-04
5 College Point Boulevard. So this is the intersection of
6 College Point Boulevard and Fowler Avenue.

7 Q And now, the street that is shown on the very top portion
8 of this screen going horizontal, which street is that?

9 A That's College Point Boulevard.

10 Q And what is the cross street that is shown on the right
11 side of the scene going vertical?

12 A That is Fowler Avenue.

13 Q And what lot is shown on the left side of the vehicle?

14 A That is the BP gas station.

15 Q And what are we going to observe on this camera angle?

16 A At this camera angle, you will see the white Honda Accord
17 come to the stoplight and make a right, followed by the white
18 Toyota Camry coming to that same stoplight, following it, and
19 making a right.

20 MR. PARK: Resuming the video.

21 (Video recording played.)(Video recording stopped.)

22 MR. PARK: And pausing the video at 16 minutes and
23 22 seconds in.

24 Q What is highlighted on the top left portion of the
25 screen?

DIVER - DIRECT - MR. PARK

1431

1 A So from this camera angle, you see the top left is the
2 white Enterprise work van.

3 Q And what time is shown on the bottom center of the
4 screen?

5 A The timestamp here says 2:38:08 a.m.

6 MR. PARK: Resuming the video.

7 (Video recording played.)(Video recording stopped.)

8 (Continued on the following page.)
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Diver - cross - Ser

1432

1 DIRECT EXAMINATION

2 BY MR. PARK: (Continuing)

3 Q The video ends at 17 minutes and 20 seconds in.

4 Mr. Diver, is that the entirety of your video
5 compilation you created?

6 A Yes, it is.

7 MR. PARK: No further questions.

8 THE COURT: And the Enterprise van was in the
9 picture went through the light and then turned down the
10 street; is that correct?

11 THE WITNESS: Yes, I believe it turned left on to
12 Blossom Avenue.

13 THE COURT: Blossom?

14 THE WITNESS: Blossom.

15 MR. SER: If you want to leave the lighting as is.

16 MR. KOUSOUROS: I have no questions.

17 CROSS-EXAMINATION

18 BY MR. SER:

19 Q Good afternoon, Mr. Diver.

20 A Good afternoon.

21 Q You said that you worked for with the Manhattan District
22 Attorney's Office?

23 A Yes, I do.

24 Q It sounds like you have a specialty in examining video
25 surveillance?

Diver - cross - Ser

1433

1 A Yes, I do surveillance video.

2 Q And then preparing these compilation videos?

3 A Yes.

4 Q So fair to say you're pretty familiar with certain video
5 standards?

6 A As in -- in what terms? I'm sorry.

7 Q Well, you're familiar with how video surveillance is
8 captured, for example; right?

9 A Yes.

10 Q And video surveillance can be captured through what's
11 called infrared illumination; correct?

12 A Yes, I am familiar with that.

13 Q You know what that is?

14 A Yes, I'm familiar with it.

15 Q Okay. And the video footage that you reviewed in this
16 case came from infrared illuminated security cameras; right?

17 A I don't have that knowledge off the top of my head. I
18 didn't pull the video.

19 Q You didn't go to the scene and check the cameras and see
20 what they look like?

21 A Me myself, no.

22 Q That wasn't something you chose to do?

23 A No. That was not part of my job.

24 Q You chose not to do that; right?

25 A I chose not to go view the cameras?

Diver - cross - Ser

1434

1 Q Yes.

2 A Sure. Yeah. I didn't go to the scene.

3 Q And no one told you couldn't do that; right?

4 A Yeah, I was just told to do the video compilation.

5 Q Okay. But IR means or infrared can be short and people
6 refer to as IR; right?

7 A Sure.

8 Q And infrared illumination is light that is invisible to
9 the human eye, right? We can't see it?

10 A Okay.

11 Q Yes?

12 A I'm not totally sure.

13 Q You said you were familiar with the infrared-illumination
14 type cameras?

15 A I've seen them before, yes.

16 Q Okay. But infrared illumination is a light that is
17 invisible to the human eye? We can't see it; right?

18 A Yes.

19 Q And infrared illumination enables security cameras to
20 capture images in things like total darkness; right?

21 A Yes, you can see certain people.

22 Q Well, you can see whatever is captured by the field of
23 vision of the camera; right?

24 A Right.

25 Q So it could be people?

Diver - cross - Ser

1435

1 A Sure. Yes.

2 Q It could be cars?

3 A Yes.

4 Q It could be just the scene?

5 A Yes.

6 Q Landmarks?

7 A Yes.

8 Q Okay. But the purpose of IR illumination is to assist
9 the video equipment and its ability to capture the scene;
10 right?

11 A Yes.

12 Q So that even if it's too dark, for example, for the human
13 eye to see something, the infrared illumination ability of a
14 camera would light it up?

15 A Yes.

16 Q And the camera could capture the scene that way; right?

17 A To an extent, yes.

18 Q A human, on the other hand, may not be able to see what
19 the camera is showing because we don't see through infrared
20 illumination; right?

21 A Correct.

22 Q Okay. So these cameras in the footage captured through
23 IR illumination will be better than what we would see if we
24 were standing out there at this time of night; correct?

25 A Us ourselves standing at the karaoke bar looking across

Diver - cross - Ser

1436

1 the parking lot?

2 Q No.

3 The footage captured by infrared-illumination based
4 cameras would be much better in terms of what you can see than
5 what a human would see standing in the place of those cameras;
6 right?

7 A Yes, but also location of the camera, where it's located,
8 of course, you could see a better angle.

9 Q Right. But the purpose of the IR cameras is to capture
10 things we wouldn't be able to see as humans standing there at
11 that time in the middle of the night when it's dark out;
12 right?

13 A I couldn't say. I wasn't there on the scene.

14 Q Well, you agreed that IR illuminated cameras see in total
15 darkness; right?

16 A Yes. Or sometimes you're able to see individuals, you
17 know, like, movement or -- from far away. You don't know what
18 it is, but you still see movement.

19 Q But you didn't go there and test that theory out, did
20 you?

21 A No.

22 Q So the image produced by an IR illuminated camera can be
23 clear like we are seeing in the video footage?

24 A Yeah. It's pretty clear.

25 Q Detailed perhaps?

Diver - cross - Ser

1437

1 A To an extent.

2 Q Okay. And, so, as a result, it will make -- IR
3 illumination style cameras will make the image appear brighter
4 than it really is; correct?

5 A As I said, I wasn't there at a specific time of night to
6 see.

7 Q But that's the way IR illumination-based cameras work,
8 right? They make things brighter so you could see?

9 A To an extent.

10 Q Now, you testified earlier that you were tasked with
11 watching for certain vehicles on the footage; correct?

12 A Yes.

13 Q And it sounds like you spent a considerable amount of
14 time reviewing all this footage. You said 50 hours
15 approximately; right?

16 A Yes.

17 Q You watched every video file that you were given?

18 A Yes.

19 Q At least once?

20 A More than once.

21 Q Okay. You rewind it, fast forward, go back, you can
22 view things over and over again; right?

23 A Yes.

24 Q Okay. And you said one of the cars that you were looking
25 for, that you were told to look for was this white Enterprise

Diver - cross - Ser

1438

1 van; right?

2 A Yes.

3 Q Now, the cameras on 131st -- I'm going to try to make
4 this easy so can understand landmark and geographically where
5 we are.

6 MR. SER: Can I use the ELM0?

7 Q Showing you what's been admitted into evidence as Defense
8 Exhibit Z-102.

9 This is the same photo that you saw earlier as an
10 Government Exhibit; correct?

11 A Yes.

12 Q Just so we can orient ourselves, there is a red bulb on
13 the bottom left where I'm pointing. Can you see that?

14 A Yes.

15 Q That is the location at 131-1 Fowler Avenue?

16 A Yes, it is.

17 Q That's the GS KTV karaoke club; right?

18 A Yes.

19 Q That's the club that we just saw cameras inside capturing
20 what was going on; right?

21 A Yes.

22 Q Okay. Even though the entrance -- withdrawn. Even
23 though the address of the karaoke is a Fowler Avenue address,
24 the entry/exit is actually on 131st; right?

25 A That is correct.

Diver - cross - Ser

1439

1 Q And that was the doorway that was opened in the video
2 footage we watched when the gentleman stepped out on to the
3 sidewalk; correct?

4 A When the victim steps out on to the sidewalk that is on a
5 131st Street.

6 Q And I'm pointing approximately to where that doorway is
7 on 131st. Is that a correct estimation?

8 A Yeah, it's about there.

9 MR. SER: And let the record reflect I am pointing
10 to a spot just beneath the dash between 131-1 Fowler Avenue,
11 approximately halfway or in the middle of the building there
12 on 131st Street.

13 Q So this street here that I'm pointing to, sir, that's
14 131st; correct?

15 A Yes.

16 Q And this roadway that we see here, that's the Van Wyck;
17 correct?

18 A I believe so. You are talking about the highway above
19 the parking lot.

20 Q Yes. This right here (indicating).

21 A Yes.

22 Q So the judge asked you earlier where this parking lot
23 was. If you were to walk out of GS KTV Karaoke on to the
24 sidewalk facing forward, the parking lot would be across the
25 street; correct?

Diver - cross - Ser

1440

1 A There's certain sections of the parking lot, but, yes,
2 the overall parking lot underneath the Van Wyck is across the
3 street from the karaoke.

4 Q Correct.

5 And it runs under the Van Wyck, what is that?

6 A North/south.

7 Q North/south. North/south, you said?

8 A Yes.

9 Q But the parking lot literally runs under the Van Wyck all
10 the way to College Point Boulevard; right?

11 A I believe so, yes.

12 Q And so, when you walked out of GS KTV karaoke, the
13 parking lot is across the street; right?

14 A A portion of the parking lot, yes.

15 Q The parking lot?

16 A Yes. I'm just referring to which specific parking lot.

17 Q If you were to pan your view to the left, you would see
18 that parking lot continues under the Van Wyck, but you can't
19 see it anymore basically?

20 A Until you can't see it, yes.

21 Q Okay. Just so we're oriented, that would be looking in
22 this direction under the Van Wyck if you come out of the
23 karaoke club; right?

24 A What are you pointing to? I'm sorry.

25 Q If you come out of the karaoke club and you're standing

Diver - cross - Ser

1441

1 on the sidewalk and you look to the left, you're looking in
2 this direction; right?

3 A You're looking in that direction?

4 Yes, you're looking south.

5 Q Correct. So if you come out of the karaoke and look to
6 the left, you're looking --

7 A South.

8 Q South. Okay.

9 Now, this street here that we have been talking
10 about is actually Fowler Avenue.

11 A That is correct Fowler.

12 Q Fowler Avenue runs all the way from 131st to College
13 Point Boulevard; right?

14 A Yes.

15 Q That's a one-way in that direction?

16 A Yes, from west to east.

17 Q Okay. And so on the camera footage we saw came from
18 either cameras along 131st Street; right?

19 A Yes.

20 Q Or on Fowler Avenue; correct?

21 A Yes.

22 Q Okay. Now, the footage that you showed us that was on
23 131st immediately in front of the karaoke club, looking
24 towards the Van Wyck, that footage began at approximately
25 12:00 a.m.; correct?

Diver - cross - Ser

1442

1 A The footage in general?

2 Q Well, the footage in front of the karaoke club capturing
3 the exit/entryway, that begins approximately 12:00 a.m.;
4 right?

5 A You're talking about overall?

6 Q I'm talking about the video footage that captured the
7 entry/exit way to the karaoke club?

8 A I'm sorry. You're not speaking of just my compilation
9 specific --

10 Q No. Not your compilation. My apologies. My question
11 wasn't clear enough.

12 Let me back up. Let me ask you this:

13 The footage you have, you had over a dozen different
14 video files; right?

15 A Yes.

16 Q Some started at different times than others?

17 A Yes, they did.

18 Q Some were much longer than others; right?

19 A Yes.

20 Q For example, the video camera angles that were capturing
21 the entry/exit of the club, those started at approximately
22 12:00 a.m.?

23 A Yes, they did.

24 Q And they ran all the way through 3:00 a.m. continuously;
25 right?

Diver - cross - Ser

1443

1 A Approximately 3:00 a.m. yes.

2 Q Other captures, though, maybe -- I don't know -- six
3 minutes, perhaps; right?

4 A Yes. There are some camera angles that capture not that
5 long.

6 Q Right. And the six minutes, for example, the BP gas
7 station footage we got, that captured six minutes but only
8 around the time that those cars passed by the BP gas station;
9 right?

10 A That is correct.

11 Q And it didn't go all the way back to midnight, at least
12 the footage that you were given; right?

13 A Yeah, that doesn't capture that whole time.

14 Q So you didn't have continuous footage from 12:00 a.m. to
15 3:00 a.m. for every video camera angle you were given?

16 A I did not.

17 Q Now, you watched, though, the footage which I think was
18 identified as Government Exhibit 103 and 104, which is the
19 video footage capturing the entry/exit to the club on 131st
20 from start to finish, 12:00 a.m. to 3:00 a.m.; right?

21 A Yes.

22 Q And your task was to watch and seen how many times you
23 might have seen a white Enterprise rental van driving on 131st
24 past the club; right?

25 A Yes, I was watching the video and taking notes of when it

Diver - cross - Ser

1444

1 passed.

2 Q Right. And your notes were a chart that you kept, right,
3 a spreadsheet?

4 A Yes. It helps me orient myself as to the video times,
5 timestamps and any notes that I want to take.

6 Q Again, you watched the footage from 12:00 a.m. to 3:00
7 a.m.?

8 A On this camera, yes.

9 Q Okay. And you only saw that Enterprise van pass by on
10 131st pass the GS KTV karaoke club twice; right?

11 A On video, yes, on this camera, yes.

12 Q Did you see it on anything else other than video?

13 A No.

14 Q So you saw it twice on the video pass by the entry/exit
15 to the GS KTV karaoke; right?

16 A Yes.

17 Q I believe the first time was at approximately 12:42 or
18 12:43 a.m.; right?

19 A Correct.

20 Q And the second time was approximately 12:46, 12:47 a.m.;
21 right?

22 A Yes.

23 Q Okay. So because of the way the streets work, and Fowler
24 Avenue being a one-way, right, the video captured that white
25 Enterprise van passing by the karaoke club and making a left

Diver - cross - Ser

1445

1 on Fowler both passes; right?

2 A Yes, heading east towards College Point Boulevard.

3 Q So the only direction that van could go would have been
4 up towards College Point Boulevard on Fowler Avenue; right?

5 A In that camera angle? What I have seen, yes.

6 Q It makes a left on Fowler, it goes up towards College
7 Point Boulevard; right?

8 A Yes.

9 Q After the first pass, it took about three to four minutes
10 for that van to reappear on video; right?

11 A Yes.

12 Q Which meant going up Fowler, based on what we said
13 earlier, that's a one-way; right?

14 A Yes.

15 Q And to get back it would be making a left on to College
16 Point Boulevard; correct?

17 A Yes. One can assume, yes.

18 Q And then a left on to what is Avery Avenue there; right?

19 A Yes.

20 Q Avery Avenue is this street here; right?

21 A Yes, it is.

22 Q That's a one-way also?

23 A Yes.

24 Q And there are commercial buildings, if you know, along
25 Avery; right?

Diver - cross - Ser

1446

1 A I'm not aware of the location, but I know it's a one-way.

2 Q Okay. Do you know there is a Home Depot there?

3 A I do.

4 Q Okay. Do you know there is a meat market supermarket at
5 the corner of Avery Road and College Point Boulevard?

6 A I do not.

7 Q So you do know there is some commercial buildings,
8 though, along that avenue?

9 A Yes, I'm aware there are other buildings on that street.

10 Q Okay. And, so, you agree that the time between the first
11 time that van appeared, the Enterprise van appeared on 131st
12 in front of the club and the second time was approximately
13 somewhere between three and four minutes; right?

14 A It was somewhere around there.

15 Q Now, we saw the footage when the victim stepped out of
16 the karaoke club, you recall that; right?

17 A Yes.

18 Q All right. And according to the timestamp on the video,
19 he steps through that doorway and on to the sidewalk,
20 according to timestamp, at 2:29 and 38 seconds in the morning;
21 right?

22 A Yes. Well, depends which camera angle you're speaking
23 about.

24 Q Based upon I guess Government Exhibits 103 and 104.

25 A I would have -- there's a lot of video.

Diver - cross - Ser

1447

1 Q Would taking a look at your spreadsheet notes help
2 refresh your recollection?

3 A Yes, if you don't mind.

4 MR. SER: Your Honor, may I approach?

5 THE COURT: Yes.

6 Q Mr. Diver, I'm handing you what was previously marked as
7 3500-JD-1.

8 A Thank you.

9 Q I will direct your attention to the most-right-hand
10 column, which you have shaded in green; correct?

11 A Yes.

12 Q All right. And if you -- actually, let's start over.

13 On the far left side you have GX number; right?

14 A Yes.

15 Q I want you to take a look at the section for GX-103, 104
16 and look all the way to the right in the green-shaded area.

17 A Yes, I see it.

18 Q Does that refresh your recollection as to what time on
19 GX103 and 104 -- actually, it should be 104, right? That's
20 the later footage?

21 A Yes.

22 Q Does that refresh your recollection as to what time the
23 victim stepped out?

24 A That camera angle, yes.

25 Q According to that camera angle, he leaves the club at

Diver - cross - Ser

1448

1 approximately 2:29 and 38 seconds a.m.; right?

2 A Yes.

3 Q Okay. And the shooting occurs, according to the
4 timestamp again on GX-104 at 2:31 and 56 seconds a.m.; right?

5 A Yes, give or take.

6 Q Which is approximately two minutes, 18 seconds time;
7 right?

8 A Yes.

9 MR. SER: Thank you. You can put that aside.

10 Q Now, all the footage you reviewed you said you obtained
11 from law enforcement; right?

12 A Yes, from Detective Capo.

13 Q From Detective Capo. And that was everything they had;
14 right?

15 A That was everything they had.

16 Q Okay.

17 A That I am aware of. I wasn't there to pull video. This
18 is what I was given.

19 Q Well, typically, when you're asked to do a compilation,
20 you get everything because they want a thorough compilation;
21 right?

22 A No.

23 Q Is there anything in this case tell you that wasn't the
24 case?

25 A No.

Diver - cross - Ser

1449

1 Q So you believe you had all the video footage that had
2 been seized in the case?

3 A Yes.

4 Q Okay. And we talked about the cameras and the angles and
5 you would agree that some of the cameras and the angles show
6 the area of 131st Street in front of the club entry/exit;
7 right?

8 A Yes.

9 Q And then some of the angles show the portion of Fowler
10 Avenue close to 131st; correct?

11 A Yes. Closer to the corner.

12 Q Okay. And then you would agree some of the camera
13 footage that we have captured Fowler near this BP gas station
14 here at the end; correct?

15 A So there is a camera angle essentially in the middle of
16 the block, 131-31 Fowler.

17 Q That's on Fowler; right?

18 A Yes. I'm just --

19 Q Yep. I appreciate that. It's on Fowler, though; right?

20 A Yes.

21 Q At then at the end, there's a BP gas station?

22 A Yes.

23 Q And that was the footage we saw towards the end of your
24 compilation; right?

25 A Of the cars heading south.

Diver - cross - Ser

1450

1 Q And those cameras were facing the corner of Fowler Avenue
2 and College Point Boulevard; right?

3 A Yes.

4 Q They were facing approximately where my pen tip is;
5 right?

6 A Yes, that intersection in general.

7 Q You did not receive any camera footage from anyplace
8 along Avery Avenue; correct?

9 A I did not.

10 Q All right. Now, at times in your video compilation, the
11 video replay, so to speak, speeds up and slows down; right?

12 A Speeds up.

13 Q Correct.

14 In one spot, you marked it 100 times, 100X; right?

15 A Yes.

16 Q That means it's playing 100 times the normal speed;
17 right?

18 A Correct.

19 Q There were other spots where it sped up but you didn't
20 identify in your compilation what the playback speed would
21 have been; correct?

22 A I don't believe that's the case.

23 Q Okay.

24 MR. SER: Can we bring up -- I'll move on. It's
25 okay.

Diver - cross - Ser

1451

1 Q When you sped up the video at 100X, by virtue of the fact
2 that it is playing 100 times faster than normal, you don't see
3 everything that occurs; correct?

4 A You see everything that occurs, but it is just in fast
5 motion.

6 Q Okay. If you play that at normal speed, GX103 and GX140,
7 you'll be able to see people coming and going through the
8 entry/exitway for GS KTV karaoke, right?

9 A Yes.

10 Q Not very clear, though, when it's playing at 100 times
11 speed; correct?

12 A You can't tell faces, but you can see bodies coming out
13 of the karaoke.

14 Q Very quickly? It's like a flash; right?

15 A Right.

16 Q Okay. And I believe the video in the compilation played
17 at 100X speed through to -- I think we stopped it at about
18 2:23 a.m.?

19 A Yes, highlighting the parking lot.

20 Q Okay.

21 MR. SER: Ms. Abreu, can you bring up GX-104? I
22 want to play a few portions of GX-104. Can you queue up
23 GX-104 to start at, I believe it's -- based upon the timestamp
24 on the video -- 1:44 and 45 seconds a.m.

25 (Video playing.)

Diver - cross - Ser

1452

1 MR. SER: Ms. Abreu, can you play it for
2 approximately the next two minutes.

3 Q Mr. Diver, I want you to watch the video.

4 And this is a video capturing again the entry/exit
5 of the karaoke club; right?

6 A Yes, facing north.

7 Q On 131st; right?

8 A Yes.

9 Q The parking lot is under the Van Wyck?

10 A Yes.

11 Q That open doorway there is what leads in and out of the
12 karaoke club?

13 A Yes.

14 Q Or, at least, the hallway to get to that elevator to go
15 up; right?

16 A Yes.

17 Q Right now, at approximately 1:45 a.m., according to the
18 timestamp, there are a couple of people who have walked out of
19 the karaoke club; right?

20 A Yes.

21 Q There is a gentleman standing on the sidewalk in front of
22 those doors there; correct?

23 A Yes.

24 Q It looks like he's watching or looking at his phone?

25 A I'm not sure what he's doing, but he's on his phone.

Diver - cross - Ser

1453

1 Q And he's smoking a cigarette?

2 A Yes.

3 Q Okay. And he is standing out in front of that club;
4 correct?

5 A Correct.

6 MR. SER: Continue to play the video, please.

7 (Video playing.)

8 MR. SER: You can let it continue to play.

9 Q And now we're at approximately 1:46 a.m., according to
10 the timestamp on the video, and this gentleman is still
11 standing out there now for about a minute; right?

12 A Yes.

13 Q And there are some cars parked on the upper right-hand
14 corner of that screen; right?

15 A Are you talking about the cars with the lights on?

16 Q Yes, sir.

17 A Yes, they're parked.

18 Q Now, we're approximately 1:46 and 30 seconds, and again,
19 this gentleman remains standing on the sidewalk smoking a
20 cigarette; right?

21 A Yes.

22 Q This is playing at normal speed; right?

23 A Yes.

24 (Video playing.)

25 MR. SER: Can you pause it there.

Diver - cross - Ser

1454

1 (Video paused.)

2 Q So at about 1:47 a.m., he discards the cigarette and
3 begins walking over to those cars; right?

4 A He begins to head northbound on 131st Street, yes.

5 Q So he was standing out there for about two minutes;
6 correct?

7 A Yes, approximately.

8 MR. SER: Can you continue playing that for
9 approximately 15 seconds.

10 (Video playing.)

11 Q You can see a silhouette there right at about 1:47 a.m.
12 and ten seconds; right?

13 A You see the individual getting into the car.

14 Q A silhouette of the individual; right?

15 A I think you can see him pretty clear.

16 MR. SER: All right. Can you queue up this same
17 exhibit to 154 and 55 seconds a.m.

18 That's good. You can start playing it there.

19 (Video playing.)

20 Q So we are now 1:54 and 55 a.m., according to the
21 timestamp, in the upper left-hand corner?

22 A It says 59.

23 Q We started it at 55?

24 A Yes.

25 Q Again, this is the same camera angle of GX-104 looking at

Diver - cross - Ser

1455

1 the entry/exit to the club, right?

2 A Yes.

3 Q And approximately 1:55:05 it looks like three different
4 individuals walk out of the club on to the sidewalk?

5 A Yes, heading north.

6 Q Okay. At least one appears to be in some sort of black
7 jacket with a hood up; correct?

8 A Yes.

9 Q And he is, based on --

10 MR. SER: Can you pause it there?

11 Q -- at least at 1:55:27 --

12 MR. SER: If we can go back just slightly.

13 Q -- he appeared to be staring across into the parking lot;
14 right?

15 MR. SER: Right there. That's good.

16 Q He seems to be facing the direction of the parking lot;
17 right?

18 A His body is. I'm not sure where he is looking.

19 Q But his head is facing at least the parking lot as well;
20 right?

21 A It's across the street, yes.

22 Q And the other two gentlemen, it looks like, went to talk
23 to somebody in that car with the headlights on; correct?

24 A I would need you to continue to play the video.

25 Q Okay.

Diver - cross - Ser

1456

1 MR. SER: Play the video, please.

2 (Video playing.)

3 Q Again, that person with the hood is on the sidewalk and
4 now at 1:55:35 walks over to that car; correct?

5 A Walks into the middle of the street, yes.

6 Q And here, at 1:55:43, we now see a gentleman actually
7 entering the club; correct?

8 A Yes.

9 Q It looks like he came from the direction of the parking
10 lot and the Van Wyck; right?

11 A From this camera angle, I can't exactly tell you.

12 He's coming from south heading north into the bar.

13 Q And now we're approximately 1:56 a.m.

14 MR. SER: Can you pause it there for a moment.

15 Q It appears over the Honda Caravan that's parked in front
16 of an open doorway, there appears to be a silhouette; right?

17 A It's that same person that was in front of the karaoke
18 bar.

19 Q With the hood up; right?

20 A Yes.

21 Q Standing in the street?

22 A Yes.

23 MR. SER: Continue.

24 (Video playing.)

25 Q It appears now the door is opening on that car with the

Diver - cross - Ser

1457

1 headlights on at approximately 1:56 and 10 seconds a.m. and
2 everyone is getting in; correct?

3 A Correct.

4 Q Okay.

5 MR. SER: Can you queue up GX-104 now to 2:21 and 50
6 seconds. That's good.

7 (Video playing.)

8 Q The timestamp here is 2:21 and 50 seconds a.m., as I said
9 it; correct?

10 A Yes.

11 Q And the same camera angle outside the karaoke on 131st;
12 right?

13 A Yes.

14 Q And, again, the doorway is on the right?

15 A Yes, it is.

16 MR. SER: Can you play it.

17 (Video playing.)

18 Q And approximately 2:21 and 58 seconds, it looks like
19 three gentlemen leave the club and cross 131st; correct?

20 A Yes.

21 MR. SER: Continue playing.

22 (Video playing.)

23 Q And they disappear out of view of the camera at
24 approximately 2:22:08 a.m.; right?

25 A At this camera angle, yes.

Diver - cross - Ser

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1 MR. SER: Can you go up one more, Ms. Abreu, 2:23
2 and 50 seconds. Perfect, pause it.

3 (Video playing.) (Video paused.)

4 Q Again, I'm showing you GX-104, this is the same camera
5 angle facing 131st in front of the entry/exit to the club;
6 right?

7 A Yes.

8 Q The timestamp now is 2:23 and 50 seconds a.m.; is that
9 right?

10 A Yes.

11 Q This was 2/12/2019 for all of the clips we have been
12 viewing; right?

13 A From -- yes.

14 Q Okay.

15 MR. SER: Can you please play the video.

16 (Video playing.)

17 MR. SER: Pause it.

18 (Video paused.)

19 Q At approximately 2:23 and 57 seconds a.m., it appears two
20 people now leave the club; right?

21 A Yes.

22 MR. SER: Can you play it.

23 (Video playing.)

24 Q Appears to be a man and woman; right?

25 A Yes.

Diver - cross - Ser

1459

1 Q And they cross 131st.

2 MR. SER: Pause it there.

3 (Video played.) (Video paused.)

4 Q They cross 131st; right?

5 A Yes.

6 Q And disappear out of view at approximately 2:24:04 a.m.;
7 right?

8 A In this camera angle, yes.

9 Q A considerable amount of foot traffic in and out of the
10 club leading up to at least 2:24 a.m.; right?

11 A Yes. It's a karaoke bar.

12 Q And it's open very late?

13 A I don't know what time it's open until.

14 Q Still open at this time; right?

15 A Yes.

16 Q And the shooting occurs just minutes after these people
17 left; right?

18 A Shortly after.

19 Q Approximately six minutes or so; right?

20 A Right.

21 MR. SER: I don't have anything further, Your Honor.

22 THE COURT: Does the Government have anything
23 further?

24 MR. PARK: Just a quick redirect.

25 THE COURTROOM DEPUTY: Mr. Park, do you need the

Diver - redirect - Park

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1 lights?

2 MR. PARK: I'm okay.

3 REDIRECT EXAMINATION

4 BY MR. PARK:

5 Q Mr. Diver, you were asked on cross-examination about
6 whether or not you went to the scene of the shooting.

7 When was the incident? When did the incident occur?

8 A The incident occurred February 12, 2019.

9 Q And when were you asked to put together the compilation
10 video?

11 A It wasn't for months after that, that Detective Capo had
12 approached me to assist him on creating the video compilation
13 the first time.

14 Q And were you asked to go back to the scene, you know,
15 three, four years after the shooting to review the physical
16 cameras?

17 A No, I was not.

18 MR. PARK: No further questions, Your Honor.

19 THE COURT: Thank you. You can step down.

20 THE WITNESS: Thank you.

21 (Witness steps down.)

22 THE COURT: Call your next witness.

23 MS. MOORE: The United States calls Detective
24 Jeffrey Lehn.

25 THE COURTROOM DEPUTY: Step up and raise your right

Diver - redirect - Park

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1 hand, please. Do you solemnly swear or affirm that you will
2 well truly interpret the proceedings before the Court?

3 THE WITNESS: Yes, I do.

4 (Witness sworn.)

5 THE COURTROOM DEPUTY: Can you please state and
6 spell your name for the record.

7 THE WITNESS: My name is Jeffrey Lehn, L-E-H-N.

8 THE COURTROOM DEPUTY: You may be seated. Thank
9 you.

10 THE WITNESS: Thank you.

11 (Continued on next page.)

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Lehn - direct - Moore

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1 **JEFFREY LEHN,**

2 called as a witness, having been first duly

3 sworn/affirmed, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. MOORE:

6 Q Good afternoon.

7 A Good afternoon.

8 Q What is your educational background?

9 A I graduated from the University of Rochester with a dual
10 major in both history and studio art.

11 Q Where do you currently work?

12 A For the NYPD, New York City Police Department.

13 Q What is your title there?

14 A I'm a detective.

15 Q How long have you been with the NYPD overall?

16 A I have just finished 18 years this past summer.

17 Q How long have you been a detective?

18 A I was promoted in March of 2012.

19 Q And do you work for any particular unit within the NYPD?

20 A I do. I work for auto crim.

21 Q What does the auto cripples unit do?

22 A Our mission statement is to investigate auto theft
23 through theft training with chop shops, exporters, basically
24 the business of auto crime.

25 And we also function as an help line for the

Lehn - direct - Moore

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1 department because we are the police department's car experts.

2 Q And you said you function as like a help line. What kind
3 of help do you provide to other members of the NYPD?

4 A I go out and do a lot of search warrants. I -- where I
5 work on cars, I pull data out of the vehicles. I discover
6 hidden traps and compartments where people have secreted items
7 or contraband, and I also do a lot of vehicle IDs as well.

8 Q Have you received any specialized training in connection
9 with your position within the auto crimes unit?

10 A I have.

11 It started when I actually -- we run a school. It's
12 a four-day program. It started when I actually attended as a
13 police officer in 2008.

14 Q Can you describe that four-day school for us?

15 A Sure. It covers how vehicles are used in crimes and how
16 to identify vehicles and laws pertaining to vehicles.

17 Q And have you received any additional training with
18 regards to cars?

19 A I have.

20 So I have taken classes relating to traps and hiding
21 places. I went to a conference this past winter or spring
22 relating to that.

23 I have taken -- I'm a member of IAATI. The
24 International Association of Auto Theft Investigators. I took
25 their photographic and vehicle identification class.

Lehn - direct - Moore

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1 As part of that class, I was also certified as a
2 Level 1 and Level 2 vehicle theft investigator.

3 Q Can you describe THE IAATI classes and the certifications
4 that you received from them?

5 A Okay.

6 It's the -- the photo video one specifically?

7 Q Yes.

8 A It was -- it -- it was a few days of training, how to
9 view images and pick up on details within images and video
10 that could lead to you discern what type of vehicle you're
11 looking at on film.

12 Q Do you have any certifications besides the IAATI one that
13 you just mentioned?

14 A I do.

15 I have received training from the Berla, B-E-R-L-A,
16 Corporation. They provide software and hardware regarding
17 forensics extractions of vehicles.

18 I'm certified through them as a vehicle forensic
19 technician and a vehicle forensic examiner.

20 Q What does that mean?

21 A It means I can determine what sort of information systems
22 would potentially be in a vehicle I'm supposed to be working
23 on function, and then from there, remove it, obtain the data
24 and analyze it.

25 Q Have you done any appraisal work with regards to cars?

Lehn - direct - Moore

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1 A I have.

2 Q Can you tell us about that?

3 A Yes. I am certified as appraiser, actually, with the New
4 York State Department of Finance for vehicle damage and theft,
5 and I do appraisal work for District Attorney's Office and
6 other prosecutorial agencies.

7 Q Can you explain what that means?

8 A In order to achieve a certain level of charge, there are
9 different values associated with the grand larceny, that that
10 car needs to be worth \$100, 3,000, 50,000. Based on the value
11 of the car, that determines the level of charge.

12 In order to become certified for that, I took a
13 course relating to the construction of vehicles, because in
14 order to repair damage, you have to be able to know how
15 they're built, and I had to pass a test in regards to that as
16 well.

17 Q And how is the appraisal work that you have done helpful
18 when you are identifying a vehicle?

19 A It's incredibly helpful.

20 That appraisal work means you're still looking at
21 different parts and components of a vehicle, different body
22 panels, for instance, and now I'm looking at that just the
23 same on film.

24 Q Do you have any -- did you have any experience with cars
25 before you joined the NYPD?

Lehn - direct - Moore

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1 A My entire life has been cars. It started out as an
2 interest and a hobby when I was a little kid.

3 I proceeded to -- my first jobs were in mechanic
4 shops, mom-and-pop shops. I started sweeping the floors, oil
5 changes, kept going. And then I got on the force when I was
6 21.

7 Q How many years did you work in mechanic shops?

8 A I started when I was 16, so 16 to 21.

9 Q Are you a member of any organizations related to your
10 work in the field of auto crimes investigation and
11 identification of vehicles?

12 A I am.

13 I am a member of the Northeast Chapter of IAATI,
14 I-A-A-T-I, International Association of Auto Theft
15 Investigators.

16 I'm also a member of the New York State Chapter and
17 the International Association of Special Investigation Units.
18 It is an insurance group, actually, related to the appraisals.

19 Q Appraisals of cars?

20 A Yes.

21 Q Do you do any teaching related to your work with regards
22 to vehicle identification?

23 A I do.

24 Q Can you tell us about that?

25 A Yeah. So that class I spoke about earlier, the NYPD auto

Lehn - direct - Moore

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1 crime class, I actually run it now. I'm the lead instructor
2 and course director. I wrote the entire curriculum.

3 It's a four-day program that we put on for members
4 of the NYPD and other law enforcement agencies. I've had
5 district attorneys, members of DMV, their investigators, and
6 people from all over the world in law enforcement community.

7 Q When did you begin teaching those classes?

8 A I began teaching when we reopened right after COVID, so
9 January of 2021, and I became the lead instructor in -- the
10 end of last summer.

11 Q Can you tell us what a vehicle identification is?

12 A Sure. So there are two types of vehicle identifications:
13 There is a physical or a digital or photographic.

14 Starting with the physical, that's when the car has
15 been messed with in some way that would make it so it would be
16 difficult for law enforcement or anybody to determine what the
17 VIN number of that vehicle is, whether the VIN number has been
18 changed or damaged in some way or is just unreadable due to
19 accident damage or something.

20 Then I would go into the vehicle and examine
21 component parts, engines, transmissions, other places where I
22 could find labels that could indicate what that car is.

23 Q And just to back up a second. You mentioned a VIN
24 number. What is a VIN number?

25 A I'm sorry. VIN, V-I-N, stands for vehicle identification

Lehn - direct - Moore

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1 number. It's unique to your vehicle.

2 Since 1981, all vehicles sold in the U.S. or for the
3 U.S. market have a 17-character VIN number that is effectively
4 the fingerprint for that car.

5 Q You described physical identifications. Can you walk us
6 through a digital vehicle identification. What does that
7 mean?

8 A Sure.

9 A digital vehicle identification is when a case
10 detective traditionally or someone in law enforcement presents
11 images or video that features a vehicle prominently, and based
12 on details I observe on the car, whether it's the shape of the
13 body panels, the headlight, taillight configuration, turn
14 signals, spoilers, various parts of the vehicle, you look for
15 those trim details in order to determine what vehicle you're
16 actually looking at.

17 Q How often, if at all, do you use records and websites in
18 the course of doing a digital vehicle identification?

19 A Every time. It's not possible without -- in order to
20 determine exactly what you have and to be sure, I try to
21 backup everything I do with records and websites.

22 I'll oftentimes start with something like Car Gurus,
23 a for-sale website, because people take very, very good and
24 accurate pictures of the car they're posting for sale and you
25 can see it from every single angle, various models, various

Lehn - direct - Moore

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1 trims of these vehicles, and then from there, those ads will
2 usually have a VIN number in it. So I will go to NHTSA,
3 National Highway Traffic Safety Association, and they have a
4 website that decodes the VIN number. So I can run that and
5 that will help me make sure that I am looking at -- what I'm
6 looking at is exactly as it is listed in the ad.

7 Q Do you use any additional records or pamphlets or
8 brochures during the course of your identifications?

9 A Yes, whenever possible, I actually use the sales
10 brochures from car companies. There are archival sites where
11 they're hosted.

12 Q And approximately how many car identifications have you
13 been involved in?

14 A Hundreds.

15 Q And approximately how many cars have you completed a case
16 on?

17 A Probably around -- a little over 50.

18 Q When you complete a case on a car, what does that mean?

19 A That involves doing DD5s or reports that involves being
20 prepared to testify in regards to it, actually.

21 I will send sample photos of vehicles and this is
22 the car I'm putting my name on that.

23 Q And how, if at all, do you validate your opinion when you
24 identify a particular car as a certain make or model?

25 A Well, after sourcing out other images and details from

Lehn - direct - Moore

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1 the internet, once I come up with my own assessment, I will
2 have one of my coworkers review the materials and we -- we
3 collaborate and determine.

4 (Continued on next page.)

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Lehn - direct - Moore

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1 (Continuing.)

2 BY MS. MOORE:

3 Q When you say one of your other coworkers, is this someone
4 else who also has gone through -- who is a part of, I guess,
5 the autocrimes unit?

6 A Yes. Traditionally, or typically, it's someone who is in
7 the Autocrimes Unit that has training to do this as well.

8 MS. MOORE: Your Honor, pursuant to Federal Rule of
9 Evidence 702, at this point, I would move to qualify Detective
10 Jeffrey Lehn as an expert in the field of vehicle
11 identification.

12 THE COURT: All right. There being no objection,
13 he'll be received as an expert in this field.

14 Q In relation to a car, what is a make?

15 A It's the brand.

16 Q Can you give a couple examples?

17 A Sure. Honda, Acura, Toyota. Nike is a shoe company,
18 Toyota, is a car company. It's the brand itself.

19 Q And how about a model, what does that mean?

20 A That's the car. Honda Accord, Acura Integra, Toyota
21 Camry.

22 Q What's an aftermarket feature?

23 A Something that wasn't placed there by the factory.

24 Q So something you would add or change to a car subsequent
25 to purchase?

Lehn - direct - Moore

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1 A Yes, something somebody placed there because they liked
2 it or they're an enthusiast.

3 Q Walk us through how you look at a photo or identify it as
4 particular make or model.

5 A Sure. So, different car companies, they have -- they
6 don't want to seem like every other car, right? An Audi
7 wanted to differentiate themselves from BMW. There are
8 different design features that these companies use to separate
9 themselves from the crowd. I start looking at different
10 aspects of the car where different companies will do different
11 things.

12 Q And then is it kind of a similar process for once you've
13 determined the make and model to identify what year a
14 particular car might be?

15 A Well, exactly. So in terms of years, most car
16 manufacturers will have a production run where, say a Toyota
17 Camry or a Honda Accord, that car will be stable and
18 relatively unchanged for a few years because the process of
19 designing machinery and building it, I assume it's very, very
20 expense and they want to get their money back on the design
21 process. So there will be a couple years of production.

22 Q And you're, again, looking at those particular details
23 and design identification points to determine what year a
24 particular car might be?

25 A It's the little things. It could be the way there's a

Lehn - direct - Moore

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1 stroke of color in a headlight or a taillight, or the shape of
2 the rear quarter glass window, the rear most piece of glass on
3 the car besides the windshield, the way the C pillar, which is
4 that rear pillar connected the car, headlight shape, the
5 grill, even wheel traces.

6 Q Did there come a time when you became involved in this
7 case?

8 A Yes.

9 Q What did you do in this case?

10 A I received some photos and I performed a vehicle
11 identification.

12 Q Other than reviewing photos and viewing videos, did you
13 do anything else in regards to this identification?

14 A No.

15 Q Do you know Allen Yu?

16 A No.

17 Q Do you know Xi Zhang?

18 A No.

19 Q What about Antony Abreu?

20 A No.

21 Q Okay.

22 MS. MOORE: May I approach, Your Honor?

23 THE COURT: Yes.

24 Q I've just handed you a drive that contains Government
25 Exhibits 101-A, 103-A through D, 106-A and B, 140-A, 148-A,

Lehn - direct - Moore

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1 305-A, 307-A through F, 317 through 320, 459 and 527.

2 Do you recognize that drive?

3 A I do. It has my signature on it.

4 Q Is that because you viewed it and then signed the drive?

5 A That is correct.

6 Q Are these the videos and photographs that you reviewed
7 during the course of your investigation in this case?

8 A Yes.

9 MS. MOORE: Mrs. Campbell, would you mind dimming
10 the light, and, Ms. Reed, if you could pull up
11 Government Exhibit 320. And if we can play the first 40
12 seconds.

13 (Video played.)

14 Q Stopping at 40 seconds, were you able to identify the car
15 that was driving in this video?

16 A Yes.

17 Q What were you able to identify it as?

18 A It's a 2003 to 2005 Honda Accord.

19 Q You give a range of years. Why is there a range?

20 A Because it was in production for several years. It
21 remained unchanged during this time.

22 MS. MOORE: So, Your Honor I see it's after one
23 o'clock, if it makes sense to stop for lunch now.

24 THE COURT: How much longer do you have with this
25 witness?

Lehn - direct - Moore

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1 MS. MOORE: Probably, like, half an hour.

2 THE COURT: All right.

3 Ladies and gentlemen, we'll adjourn for lunch and
4 we'll begin promptly at 2:00. So have a wonderful lunch.

5 (Jury exits the courtroom.).

6 THE COURT: All right. You can be seated. You can
7 step down.

8 (The witness steps down.)

9 THE COURT: How many identifications are going to be
10 made here? Is it from other video and --

11 MS. MOORE: Sure. He's going to be identifying this
12 car and explaining how he made that identification. There are
13 certain aftermarket features present in this car which he will
14 also be identifying. There's the photo that Croizer took,
15 he'll be identifying that, and the videos that we saw earlier
16 with Mr. Acosta Pena.

17 THE COURT: So both from the event itself and from
18 the photos that were shown the other witness?

19 MS. MOORE: The videos and photos, yes.

20 THE COURT: The video, yeah. Is there going to --
21 Mr. Kousouros, you're not crossing on this, correct?

22 MR. KOUSOUROS: No.

23 THE COURT: Mr. Mazurek, is there going to be any --

24 MR. SER: It will be brief. I'll try to keep it as
25 streamlined as possible.

Lehn - direct - Moore

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1 THE COURT: Okay. I think we can probably move it
2 along a little bit.

3 Okay.

4 (A luncheon recess was taken.)

5 (Continued on next page.)
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Lehn - direct - Moore

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1 A F T E R N O O N S E S S I O N

2 (In open court; jury not present.)

3 (Witness resumes the witness stand.)

4 THE COURT: Bring the jury out, please.

5 (Jury enters the courtroom.)

6 THE COURT: I think we're ready to begin. Everyone
7 be seated.

8 Ms. Moore.

9 MS. MOORE: Thank you, Your Honor.

10 BY MS. MOORE:

11 Q So I think just before we broke for lunch, you identified
12 a video -- or a car in a video.

13 MS. MOORE: Ms. Reed, can you please pull up
14 Government Exhibit 103-B, which is in evidence.

15 Q Is this a still from the video you reviewed?

16 A Yes.

17 Q Looking at the white car on the roadway, are there any
18 thing that you see here in the still that were helpful to you
19 in making your identification of this car?

20 A Absolutely. Looking at the vehicle, the shape of the
21 headlights, the two-tone side view mirrors, the general body
22 shape, front end and the way the rear quarter glass attaches
23 to the seat pillar, how the -- how it's completely horizontal
24 and even across the doors all the way to the corner, very
25 helpful in making the identification.

Lehn - direct - Moore

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1 Q So you used a couple of technical terms. So you
2 mentioned that there's a two-tone side mirror, can you just
3 explain what you're talking about now?

4 A Absolutely. The side view mirror, the mirror closest to
5 the driver, you can see it is white on top and black on the
6 bottom.

7 Q You mentioned a C pillar?

8 A That's correct, an A, B, and a C pillar. The A pillar is
9 the one that frames the windshield, the B pillar separates the
10 front and rear doors, and the C pillar is the roof support on
11 the back of the car.

12 Q And you also mentioned a rear quarter glass I believe?

13 A Yes.

14 Q What is that?

15 A It's on the side of the car, the rear most piece of
16 glass.

17 Q And what about the rear quarter glass was helpful now
18 identifying this car?

19 A The way it comes to a sharp point as right there actually
20 where the mouse is pointing, the way the glass is horizontal
21 and a flat line across the windows and it proceeds all the way
22 to the C pillar where it's met -- where it stops, yeah.

23 Q Great. Does this car have a moonroof?

24 A It appears to.

25 Q What's a moonroof?

Lehn - direct - Moore

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1 A Moonroof, sunroof, to most people, they are
2 interchangeable. It's a window on top of the car.

3 Q Was the moonroof available on all 2003 2005 Honda
4 Accords?

5 A I don't believe so.

6 Q Would looking at the brochure refresh your recollection?

7 A I'm pretty sure it was only available on two of the trims
8 actually.

9 THE COURT: On what?

10 THE WITNESS: Two of the trim levels.

11 Q What is a trim level?

12 A So that's the next step past model. So it's make, would
13 be the brand, model would be -- so, Honda in this instance,
14 the model would be Accord, and beyond that is a trim level.
15 So Accord had the DX, LX, and EX trims, and you could get it
16 with a four similar Dr. Engine or a V6. And this point in
17 time, the moonroof was only available on the EX trims.

18 Q The EX and the EX V6?

19 A Yes.

20 MS. MOORE: Ms. Reed, could you please pull up, just
21 for the witness, Government Exhibit 454.

22 Q Do you recognize this?

23 A I do.

24 Q What is this?

25 A This the sales brochure for a 2003 Honda Accord.

Lehn - direct - Moore

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1 Q Was this helpful to you in identifying the car we saw in
2 the video?

3 A Yes, it was.

4 Q And can you explain how?

5 A So sales brochures are automakers taking pictures of
6 different aspects of the car. It's marketing materials so
7 it's a reference from the manufacturer that I can compare to
8 the car on film.

9 MS. MOORE: Your Honor, at this time, I would move
10 to admit Government Exhibit 354 into evidence.

11 THE COURT: It will be received.

12 (Government Exhibit 354 was received in evidence.)

13 MS. MOORE: Ms. Reed, if could you please go to page
14 13.

15 Q What does this show?

16 A This is the front and side of a 2003 Honda Accord.

17 MS. MOORE: And, Ms. Reed, could you please pull up
18 Government Exhibit 103-B side-by-side with this.

19 Great.

20 Q Can you explain the similarities that you see between the
21 car in 103-B and the 2003 Honda that we see in the brochure?

22 A Sure. So if you look at shape of the headlights, they
23 are fairly triangular and the opening for the grill, which is
24 the opening to allow airflow just in front of the hood, those
25 are very similar as well. And, again, you can see the

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1 two-tone side view mirror.

2 Q How about the general shape of the vehicle?

3 A The body shape is the same and even that rear quarter
4 glass and the C pillar.

5 Q Great.

6 MS. MOORE: Ms. Reed, can you please pull up
7 Government Exhibit 106-B.

8 Q And is this another still from the video we watched?

9 A It is.

10 MS. MOORE: Ms. Reed, can you pull up side-by-side
11 with this Government Exhibit 354 again, and can you go to page
12 six, please.

13 Q What do we see on page six of Government Exhibit 354?

14 A This is the side and rear view of the same Honda Accord.

15 Q And looking at the still in 106-B and then from
16 Government Exhibit 354, can you explain what similarities you
17 saw between these two cars that helped you in your
18 identification process?

19 A Again, if you look at the shape of c pillar, it matches,
20 and the taillights, the opening where the license plate would
21 go.

22 Q The location of where the license plate would go?

23 A The location but also the shape of the taillights and how
24 they frame it. Additionally, you can see the horizontal in
25 the brochure in the bumper itself and you can see the shadow

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1 of it in the video.

2 Q Great. What's a rear quarter panel?

3 A It's a semi-structural part of a car. It's basically the
4 rear quarter of a vehicle. There's one on either side of the
5 car. On the front, you have a fender, on the back, you have a
6 rear quarter panel.

7 Q Okay. And are the rear quarter panels consistent between
8 the car we see in 106-B and 454?

9 A Yes.

10 MS. MOORE: Ms. Reed, can we look back at 103-B,
11 please.

12 Q So looking back at this car, is there anything that we
13 see here that's inconsistent with the -- with, like, a factory
14 model 2003 to 2005 Honda Accord?

15 A There are. Starting with the front bumper itself, the
16 2003 to five Honda Accord did not have openings for fog
17 lights, the sides under the headlamps.

18 Q Are the fog lights the little lights that the cursor was
19 just showing that are underneath the --

20 A Yes, right there, that circle, that's a fog light -- or
21 that's the -- and the 2003 to five Honda Accord, its bumper
22 didn't have these openings. Additionally, the grill is
23 different. If you notice, the opening for the grill is the
24 same but where the chrome runs between the headlights, on the
25 older car, the 2003 to 2005, the chrome wasn't this fatter

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1 strip running along the top to the Honda H.

2 Q What were those details, this change to the grill and the
3 fog lights and the bumper, what were those more consistent
4 with instead of a 2003 to 2005?

5 A It was consistent with a 2006 or seven Honda Accord.

6 Q Okay.

7 MS. MOORE: And then, Ms. Reed, if we could
8 side-by-side this with Government Exhibit 354 again, please.
9 And could you please go to page 13 again.

10 Q So I'm looking at the driver's side headlight in 454. Do
11 we see any pigment there?

12 THE COURT: See any what?

13 MS. MOORE: Pigment.

14 A In the still from the video? Yes.

15 Q No, in 454 from the --

16 A Oh, from the brochure? Yes, you do. Right on the
17 outside edge, you can see the coloration or pigment.

18 Q And what color is that?

19 A Orange-ish.

20 Q And then how about the car in 103-B, do we see that same
21 pigment in the driver's side light?

22 A No, you do not.

23 Q What does that tell you?

24 A They were probably aftermarket.

25 THE COURT: What does aftermarket mean?

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1 THE WITNESS: Aftermarket is something added on not
2 by the manufacturer, some -- a customization or a replacement
3 apartment put on the vehicle later on.

4 THE COURT: All right.

5 MS. MOORE: Ms. Reed, can you pull up, just for the
6 witness, Government Exhibit 455.

7 Q Do you recognize this?

8 A Yes.

9 Q What is this?

10 A This is the sales brochure for a 2006 Honda Accord.

11 Q What this helpful to you in identifying certain of the
12 replacement parts that we saw on the other car?

13 A It was.

14 MS. MOORE: I move to admit Government Exhibit 455
15 into evidence.

16 THE COURT: All right. It will be received.

17 (Government Exhibit 455 was received in evidence.)

18 MS. MOORE: If we can publish this and go to page
19 five, and then, Ms. Reed, if you could put that side-by-side
20 with Government Exhibit 354, and if you can go to page 13,
21 please.

22 Q So, can you describe the differences that we see between
23 the grill and the bumper between the '03 and the '06 Honda
24 Accord?

25 THE COURT: Maybe you just want to remind the jury

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1 which is which.

2 MS. MOORE: Sure. That's a good idea.

3 Q So which car are we seeing on the left?

4 A The left is going to be the 2006 or seven Honda Accord.

5 Q And the right?

6 A Is going to be the three to five check.

7 Q Great. And then if you could explain the differences in
8 the grill and bumper.

9 A So starting with the grill, if you look at the image on
10 the left, the 2006 or seven Honda Accord, you can see the
11 chrome strip running from the outside edge near the headlight
12 towards the Honda H along the top, and you can also see how
13 it's thick compared to the chrome on the other grill.

14 Additionally, if you look at the bumper, there are
15 vertical supports and the shape and cut off is a little
16 different. There are openings underneath the headlights which
17 the -- the subject car had fog lights in, but you can see the
18 openings here very clearly, and on the older 2003 to five, you
19 can see the solid plastic on the bumper.

20 THE COURT: Clarify something. You said the subject
21 car. What did you mean by that?

22 THE WITNESS: The one that I ID'd before.

23 THE COURT: The one that was in the video?

24 THE WITNESS: Yes, ma'am.

25 THE COURT: 455, we're looking at the 2006?

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1 THE WITNESS: Yes.

2 THE COURT: So just to clarify, what is the
3 difference between the 2006 and the car you saw in the video?

4 THE WITNESS: The 2006 here?

5 THE COURT: Yes. You were -- the things with the
6 red markings around them, that's a 2006, right?

7 THE WITNESS: This is a 2006?

8 THE COURT: Now, you were saying that was different
9 from the car you saw in the video, correct?

10 THE WITNESS: The car in the video is a 2003 to
11 five, but it's been customized. There are aftermarket
12 additions or changes that were done with the vehicle.

13 Q That were consistent with a 2006 to seven Honda Accord?

14 A Especially the bumper, yes.

15 Q And the grill?

16 A Yes.

17 THE COURT: So the bumper and the grill that we're
18 looking at now in the 2006 car, you saw those features in the
19 car you saw the video?

20 THE WITNESS: Yeah. So the --

21 THE COURT: You're reaching the conclusion that it
22 was add-ons or whatever you call them?

23 THE WITNESS: So it was -- the 2006 updates to the
24 vehicle, it was a refresh of the model. They kept most of the
25 components under the hood the same and they just adapted,

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1 stylisically, some changes to the vehicle so all of the parts
2 fit from one vehicle to another. That's what this was. So
3 it's the bumper and grill from a 2006 or seven Honda Accord on
4 the 2003 to five Honda Accord.

5 Q And then to this point --

6 MS. MOORE: Ms. Reed, if you can keep Government
7 Exhibit 455 page five up and then put it up -by-side with
8 Government Exhibit 103-B. And then if you'll go it page five
9 of Government Exhibit 455.

10 Q And then can you describe the differences or the
11 similarities that you see with regards to the grill in the
12 bumper in the car we see in Exhibit 103-B with the 2006 that
13 we see in Government Exhibit 455?

14 A It looks very similar to me. You can see the chrome in
15 the grill itself running along the top edge of the grill, you
16 can also see the openings underneath the headlights where the
17 fog lights are in 103-B.

18 MS. MOORE: In Government Exhibit 455, can you
19 please go to page 25 but keep them side-by-side. And if you
20 can zoom in the car on the top left.

21 Q Do we see any fog lights in the car in Government Exhibit
22 455?

23 A You do.

24 Q And how are they shaped?

25 A Oval or circular.

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1 Q How does that compare to the fog lights we see in
2 Government Exhibit 103-B?

3 A The fog light in the brochure, it seems like a circular
4 or an oval in a black plastic mounting piece in that opening
5 in the bumper. The fog light in 103-B appears to take up the
6 entire opening. It's a completely different shape.

7 Q What does that tell you?

8 A It's probably aftermarket.

9 Q Okay.

10 MS. MOORE: And then, Ms. Reed, can you pull up
11 Government Exhibits 455 and 354 side-by-side, and if in
12 Government Exhibit 354, you can go to page 15 and if you'll go
13 to page 16 in 455.

14 Q And, again, just for clarity, is the '06 on the left and
15 the '03 on the right?

16 A Yes, the 2006 is on the left and the 2003 is on the
17 right.

18 Q And what are we looking at on these pages for these two
19 cars?

20 A This is the unibody, or the car minus everything. This
21 is just the frame of the vehicle, no doors, no wheels, no
22 bumpers, no fenders.

23 Q And will you remind us again just what a rear quarter
24 panel is?

25 A Sure. It's the rear quarter of the vehicle. It starts

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1 on the C pillar and goes the entire back part of the vehicle
2 and it ends where the door opens on the floor.

3 THE COURT: Can you just show that on the --

4 THE WITNESS: Sure.

5 MS. MOORE: The screens don't work but I think
6 Ms. Reed will do a circle.

7 THE COURT: All right. What has been circled?
8 Well, it's not circled anymore. What part of the car is that?

9 THE WITNESS: That's the rear quarter panel. It
10 would actually extend a little further forward even.

11 THE COURT: How much further forward?

12 THE WITNESS: Up until that C pillar, that's the
13 vertical pillar between the windshield and the door and a
14 little further down the wheel well.

15 THE COURT: There? Is that right?

16 THE WITNESS: Yeah, it's welded into the car, so you
17 weld in just below the -- the wheel or just in front of the
18 wheel typically, and then into the C pillar as well, when you
19 attach it.

20 Q And looking at the rear quarter panels of the two cars,
21 can you explain the differences?

22 A It's significant. If you look at the shape and the
23 method of how the bumper lines up and the retail lights.

24 Q So given that the rear quarter panels of the car we saw
25 in Government Exhibit 320 and 103-B had -- and 106-B had a

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1 rear quarter panel consistent with a 2003 to five but had a
2 bumper and a grill consistent with an '06 to '07, how are you
3 able to determine it was an '03 to '05 with an '06 to '07
4 grill instead of vice versa?

5 A Bumpers swap and change very, very easily. It's a few
6 clips typically, maybe a couple of fasteners. With this, you
7 actually need to physically cut a semi structural member of
8 the car out and you need to do it on either side of the
9 vehicle. Afterwards, you would need to weld in the new piece
10 and then smooth it out, send the whole car out to be painted.
11 It's an incredible amount of work.

12 Q And how long would that take?

13 A A long time, the body shop time, welding time, it -- it's
14 very expensive too.

15 Q And how does that compare to the length of time and the
16 cost associated with changing a grill and a bumper?

17 A Grill and bumper are very, very quickly, a couple hours.

18 MS. MOORE: Ms. Reed, can we please go to Government
19 Exhibit three 20 and if you'll go to one minute and 59 second
20 and then if you'll go forward eight frames.

21 (Video played.)

22 Q Do you see anything on the side mirrors that is
23 noteworthy here?

24 A Yes, but can you zoom in a little bit?

25 Q Sure.

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1 THE COURT: What exhibit is this just for the
2 record? I'm sorry.

3 MS. MOORE: 320.

4 THE COURT: 320. This is a still shot from a video?

5 MS. MOORE: We're just at a particular point in time
6 in the video, correct, Your Honor.

7 Q Do you see anything on the side mirrors that's
8 noteworthy?

9 A Yes, you can see on the side mere it appears to be an
10 indicator, or a turn signal.

11 Q And why was that noteworthy?

12 A It wasn't available on 2003 to five Honda Accords.

13 Q So again that's another aftermarket feature?

14 A Yes.

15 Q Okay.

16 MS. MOORE: And then, Ms. Reed, if you can go to
17 106-B, please.

18 Q Do you see anything noteworthy on the trunk of the car?

19 A Sorry, my monitor turned off.

20 Q Let us know when you're back up and running.

21 A I'm good.

22 Q Do you see anything noteworthy on the trunk of the car?

23 A Yes, there appears to be a spoiler, a lip style spoiler.

24 Q Why is that noteworthy?

25 A Again, it wasn't available from the factory on the 2003

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1 five Honda Accords.

2 Q Okay.

3 MS. MOORE: Ms. Reed, can you please pull up
4 Government Exhibit 307-C first.

5 Q Is this another still from the video that you reviewed?

6 A My monitor is black, I'm sorry. There we go. Yes, it
7 is.

8 Q Okay.

9 MS. MOORE: And then if you'll zoom in on the car,
10 Ms. Reed.

11 Q Were you able to identify the car?

12 A Yes.

13 Q What were you able to identify it as?

14 A A 2003 to five Honda Accord.

15 Q How were you able to do that?

16 A The same as previous. The shape of the C pillar, the
17 rear quarter glass, the dimple in the bumper, the shape of the
18 taillights framing out the rear license plate. It appears to
19 even be an emblem in the correct place for the Honda logo.

20 Q Great.

21 MS. MOORE: Ms. Reed, can you please pull up
22 Government Exhibit 527.

23 Q Is your screen up and running?

24 A I'm just a couple seconds behind I think. There we go.

25 Q Okay, great. Are you able to identify the car in this

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1 photograph?

2 A Yes.

3 Q This one a little bit easier probably. Can you explain
4 what kind of car this is and how you were able to identify it?

5 A Well, it's a 2003 to five Honda Accord. You can see the
6 Honda emblem clearly. You can see where it says Accord above
7 the rear taillight. The A and C are missing on this one,
8 though, there's a mark on the car where V6 may be indicated.
9 And it's just the shape, again, of the taillights surrounding
10 the license plate and the taillight on the deck lid of the
11 trunk.

12 MS. MOORE: Can you please pull up side-by-side with
13 this, Ms. Reed, Government Exhibit 454, page 11.

14 Q So you mentioned there was a marking on the car we see in
15 Government Exhibit 527 below the right taillight that was
16 consistent in location with a V6 badging. Do we see that on
17 the Honda Accord we see in Exhibit 454?

18 A Yes, that's what is circled.

19 Q And are they in the same location?

20 A Yes.

21 Q Okay.

22 MS. MOORE: Ms. Reed, if you'll please play
23 Government Exhibit 317. It's already in evidence. And if
24 you'll play it at half speed.

25 Could you zoom out.

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1 (Video played.)

2 MS. MOORE: And if you'll go to one second, please,
3 Ms. Reed.

4 (Video played.)

5 Q What do we see here?

6 A The spoiler.

7 Q What kind of spoiler?

8 A It appears to be a lip spoiler.

9 Q Can you also see a bit of taillights?

10 A Yes.

11 Q What color is this car?

12 A White.

13 MS. MOORE: And, Ms. Reed, if you could go forward
14 ten frames, please.

15 Q And what do we see there under the spoiler?

16 A A Honda emblem.

17 MS. MOORE: And if you could go forward another
18 eight frames, please, Ms. Reed.

19 Q What do we see above the right taillight there?

20 A The Accord badging.

21 Q Does it appear to have any damage to it?

22 A Yes, the A and C are missing it looks like.

23 MS. MOORE: Can you go forward another ten frames,
24 please, Ms. Reed.

25 And what do you see below -- above the bumper below

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1 the right taillight?

2 A There's a mark there, the location corresponds to where
3 it could be badged V6.

4 Q Based on viewing the car in this video, what kind of car
5 does this appear to be?

6 A A 2003 to five Honda Accord.

7 MS. MOORE: And can you pull up again Government
8 Exhibit 527, Ms. Reed.

9 Q Are there similarities between the car we see here in
10 Government Exhibit 527 and the car we just saw in the video?

11 A Well, yeah, they are both 2003 to five Honda Accords,
12 but, specifically, you can see the A and C missing out of
13 Accord, out of the Accord badge, and the mark for -- in the
14 location of the V6 badge is there.

15 Q Are they both white?

16 A They are.

17 Q Do they both have lip spoilers?

18 A They do.

19 MS. MOORE: Ms. Reed, can you please play Government
20 Exhibit 318 at half speed.

21 (Continued on next page.)

22

23

24

25

LEHN - DIRECT - MS. MOORE

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1 BY MS. MOORE: (Continuing.)

2 MS. MOORE: Can you please go to three seconds,
3 Ms. Reed.

4 (Video recording played.)(Video recording stopped.)

5 Q And what do we see here?

6 A A wheel with a Honda emblem.

7 MS. MOORE: And can you go to seven seconds, please.

8 Q And what part of the car do we see here?

9 A The C pillar and the rear quarter glass.

10 MS. MOORE: And can you go to eight seconds, please,
11 Ms. Reed.

12 (Video recording played.)(Video recording stopped.)

13 Q What do we see at this part of the video?

14 A The lip spoiler, the Accord badging missing the A and C,
15 and the taillights.

16 Q Do we also see, like, a marking below the right rear
17 taillight?

18 A Yes. It's right there where the mouse is.

19 Q And having viewed this video, what kind of car does this
20 appear to be?

21 A 2003 to '5 Honda Accord.

22 MS. MOORE: And Ms. Reed, if you can now play
23 Government's Exhibit 319 at 50 percent speed.

24 (Video recording played.)(Video recording stopped.)

25 MS. MOORE: Great. If you'll play it again and stop

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1 at three seconds.

2 (Video recording played.)(Video recording stopped.)

3 Q What do we see here?

4 A I see a lip spoiler and we're looking at the rear quarter
5 panel and the brake light.

6 MS. MOORE: If you'll continue playing it and stop
7 at six seconds.

8 Can you go forward just a bit. Stop.

9 (Video recording played.)(Video recording stopped.)

10 Q What do we see on the side mirrors?

11 A It appears to be a turn signal or indicator.

12 Q And was that feature available on factory Honda Accords
13 of 2003 to 2005?

14 A It was not.

15 MS. MOORE: And if you'll play again and stop around
16 eight seconds.

17 (Video recording played.)(Video recording stopped.)

18 Q What do we see here?

19 A A headlight, but it's missing the pigmentation on the
20 outside edge.

21 Q And do we also see fog lights in the bumper?

22 A Yes.

23 MS. MOORE: And if you could go to 12 seconds,
24 please, Ms. Reed.

25 And then go eight frames forward.

LEHN - DIRECT - MS. MOORE

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1 (Video recording played.)(Video recording stopped.)

2 Q Does this car have a moonroof?

3 A Yes, it does.

4 MS. MOORE: And if you'll play again and stop at 16
5 seconds.

6 (Video recording played.)(Video recording stopped.)

7 Q And what do we see here?

8 A The Honda grille with the chrome along the top edge
9 indicating a 2006 or '7 Honda Accord. We can also see the
10 bumper shape that corresponds with those years, and fog lights
11 that are on.

12 Q And if you'll look at this --

13 MS. MOORE: Ms. Reed, can you pull this up side by
14 side with Government Exhibit 455. If you'll go to Page 5,
15 please.

16 (Exhibit published.)

17 Q Can you explain the similarities that we see in the car
18 in 319 and the car in 455?

19 A So 455 is the sales brochure for the 2006 Honda Accord.
20 If you look at that, you see in the grille, the chrome strip
21 running along the top edge towards the Honda emblem, and you
22 can see the front bumper with the vertical supports and the
23 openings underneath the head lamps.

24 Q Notwithstanding the bumper and grille being consistent
25 with a 2006 to '7, based on this video, what kind of car are

LEHN - DIRECT - MS. MOORE

1499

1 you able to say that this is?

2 A A 2003 to '5 Honda Accord.

3 Q And is that because of the rear quarter panel that we
4 saw?

5 A Absolutely.

6 MS. MOORE: And if you could pull up side by side,
7 319 and 103B, please, Ms. Reed. And if you'll just zoom in a
8 little bit.

9 (Exhibit published.)

10 Q Can you explain how these two cars compare?

11 A They appear to be the same. They both share the 2006 or
12 '7 front bumper and grille. Additionally, they have fog
13 lights that appear to take up the entire opening within the
14 space on the bumper, and you can see the indicator on the
15 mirror on the passenger mirror, and you can see it on the
16 driver mirror in 103B.

17 Q Do they both have moonroofs?

18 A They do.

19 Q Are they both white?

20 A They are.

21 MS. MOORE: Ms. Reed, can you play just another
22 second in 319. A little further.

23 (Video recording played.)

24 MS. MOORE: Can you go back so we can see the
25 driver's side light. Maybe go to like 16 seconds, and then

LEHN - DIRECT - MS. MOORE

1500

1 we'll play it slowly, please.

2 Pause there.

3 (Video recording stopped.)

4 Q Do we see any pigment in the driver's side light here?

5 A No. I don't see any pigment.

6 Q Okay.

7 MS. MOORE: And Ms. Reed, if you could pull up
8 Government Exhibit 459, which is in evidence.

9 (Exhibit published.)

10 Q And looking at the first page, are you able to identify
11 the car that we see here?

12 A Yes.

13 Q And what kind of car is this?

14 A It's a 2003 to '5 Honda Accord.

15 Q And how are you able to identify it, thusly?

16 A It's the shape of the triangular head lamp, the C pillar,
17 the way the rear quarter glass lines up and the shape of it,
18 and the rear quarter panel and the taillight shape.

19 Q Does this car have any after-market features?

20 A It does.

21 Q What?

22 A It has the lip spoiler and I can see the side-view
23 mirror, as well, with the indicator on it.

24 Q Does this car have a moonroof?

25 A It does.

LEHN - CROSS - MR. SER

1501

1 MS. MOORE: And if we can go to Page 2, please,
2 Ms. Reed.

3 Q Looking at the front of this car, does it have any
4 after-market features?

5 A It does.

6 Q Can you explain those?

7 A Sure. The headlights are missing the pigmentation, and
8 the fog lights fill up the entire cavity or void in the bumper
9 underneath them.

10 Q What about the grille?

11 A The grille is -- appears to be a 2006 or '7 Honda Accord.

12 Q And how does this car compare to the one we saw in the
13 video that we watched at the very beginning, Government's
14 Exhibit 320, where we saw the car turn, go down the street?

15 A It looks the same.

16 Q Thank you.

17 MS. MOORE: No further questions.

18 THE COURT: Mr. Ser.

19 CROSS-EXAMINATION

20 BY MR. SER:

21 Q Good afternoon, sir.

22 A How are you?

23 Q Good. Thank you.

24 Your role was to identify the vehicles you said
25 captured on all these videos and photographs that you were

LEHN - CROSS - MR. SER

1502

1 provided, right?

2 A Yes.

3 Q To identify make and model of the white sedans that you
4 saw in all these different videos and photos, right?

5 A Yes.

6 Q All right. And you were also asked to make a comparison
7 of the white sedans in what essentially amounts to four
8 separate sets of materials, right?

9 A Yes. I was asked to do an identification.

10 Q Right. And one set would be the videos that you were
11 provided, right?

12 I'm sorry, videos from approximately 131st Street in
13 Flushing, Queens.

14 A I honestly don't know the location.

15 Q Okay. Another set would be the two still images that you
16 were provided behind this white sedan?

17 A Again, I don't know the location. I was sent some video
18 and photographs and asked to make a determination of the
19 vehicle.

20 Q Okay. What we saw the offer-up photos, right? That's
21 one set of photographs you were provided?

22 A That was a second identification I did later on.

23 Q Right. And then there were those three videos that we
24 were looking over just now that appeared to be inside some
25 sort of garage, right?

LEHN - CROSS - MR. SER

1503

1 A Yes. That was part of the second identification.

2 Q All right. So those are two sets that you were
3 comparing, and then, again, we have the briefs sets which were
4 these outdoor videos, right?

5 A The security camera, it appears to be footage?

6 Q Right?

7 A Yes.

8 Q And then we had -- it appears two still photos, I guess,
9 of the back of a white sedan, right?

10 A The security camera photos.

11 Q Whatever it was from, it was two still images of the rear
12 end of a white sedan, right?

13 A I -- do you want to --

14 Q No, I'm asking you. Just trying to narrow down the
15 categories of materials that you were comparing, that's all.

16 A I received photographs that I made a determination on.
17 That was the first vehicle ID. And then the second one had
18 the videos and the offer-up photographs.

19 Q Okay. But your role here was not to determine anyone who
20 might have been in the white sedans in the videos and images
21 you were looking at?

22 A My job was to identify the vehicle, year, make, model.

23 Q So you did not identify -- your job was not to identify
24 anyone inside of the vehicle?

25 A Nope.

LEHN - CROSS - MR. SER

1504

1 Q Right. Not to identify or determine who might have been
2 in possession of the vehicles?

3 A Nope.

4 Q Okay. Not your job to determine when any of the
5 after-market modifications might have been made to those
6 vehicles?

7 A No.

8 Q Okay. And not your job to determine who might have done
9 those after-market modifications to these vehicles, right.

10 A No, sir.

11 Q Now, in this case you didn't have an opportunity to
12 physically inspect the vehicle, right?

13 A No, I don't. Most of these, I don't, though, because
14 this is --

15 Q My question is simple.

16 You didn't have a chance to do a physical inspection
17 of a vehicle here, right?

18 A That's not part of a photographic or video
19 identification.

20 Q Right. So all you were provided were the photos and
21 videos to look at this in case, right?

22 A Yes. However --

23 Q Sometimes you have a vehicle, though, to look at, right?

24 A It's a different process. If I have a physical video
25 vehicle to look at, it's because there's something wrong,

LEHN - CROSS - MR. SER

1505

1 typically with --

2 Q Or a vehicle has been --

3 THE COURT: Let him finish his answer, okay.

4 A Typically, when I'm examining a physical vehicle, the
5 actual object in front of me is unidentifiable for some
6 reason, whether it's the VIN numbers have been changed -- we
7 all call that tagged -- or if it's potentially been in a
8 really bad accident and the VIN numbers are crushed or
9 destroyed or something happened to it. That's when I would
10 physically examine a vehicle to perform an identification.
11 Most of the vehicle identifications I do are photographic and
12 video based.

13 Q Most. But there are times where you have a physical
14 vehicle you can go inspect and look at, right.

15 A Yeah, that's what I just said. When I'm trying to
16 determine the VIN of the vehicle, true then.

17 Q Right. So if you have photos and videos of a vehicle
18 that you were provided, you can sometimes and do sometimes
19 make a comparison between those photos and videos and what you
20 physically can go inspect, correct?

21 A I guess I could. But that's a totally separate job, a --

22 Q You've never had to make an identification or testify as
23 to opinion whether a vehicle is the same vehicle as depicted
24 in photos and videos and what might have been seized by law
25 enforcement at some point?

LEHN - CROSS - MR. SER

1506

1 A I have made that, yes. I have testified --

2 Q And so you would agree if you had a physical car to go
3 inspect, you'd be able to do a more detail inspection of a
4 vehicle you can go physically go see, right?

5 A It's not necessary in this. There's so many --

6 Q I'm not asking if it's necessary in this. But if you had
7 a physical vehicle to go inspect, you could go take a look at
8 that vehicle and look as close up as you felt you needed to,
9 right?

10 A Again, that's not part of a photographic or video
11 identification.

12 Q I'm asking you if you had a physical vehicle to inspect
13 it'd be almost no limitation as to what you could look at on a
14 vehicle if you actually had it to go look at, right?

15 You could get as close to it as you wanted, right?

16 Yes or no?

17 A If I'm actually inspecting it? If there --

18 Q Sir, it's a yes-or-no question.

19 Could you get -- if you're doing a physical
20 inspection of a real car that's in the custody of police, you
21 can get as close to that vehicle to examine as you want,
22 right?

23 A That depends on the circumstances. Legally speaking, if
24 I'm able to open things up or why I'm going in. I'm allowed
25 to identify a vehicle, and in order to do that, if it's a

LEHN - CROSS - MR. SER

1507

1 physical identification because we don't know what the actual
2 VIN number is, so we can't tell what the vehicle is --

3 Q Sir, I'm not asking about a VIN number.

4 I'm just asking, if you have a physical you can go
5 look at, you get up close and personal, even without touching
6 it, you can get within inches of a part of a vehicle to look
7 at it with your eyes, right?

8 A Yes.

9 Q Okay. You can get up to within inches of it to look at
10 it with a camera, right?

11 A Yes.

12 Q To get up within inches of it to look at it with a video
13 camera, right?

14 A I guess so.

15 Q Now, if you're provided photos and videos, though, you're
16 stuck with whatever angle those photos and videos provide you,
17 right?

18 A In this specific case, they're several different
19 angles --

20 Q Sir, my question is this: You cannot change the angle of
21 a photograph you were provided, right?

22 It is what is in the photograph in, correct?

23 A It is. But that's the reason for watching a video,
24 because it allows you to go frame by frame and see it as it
25 changes --

LEHN - CROSS - MR. SER

1508

1 Q And in a video, though, you're stuck with whatever angles
2 the entire video provides?

3 You may not still be able to see the entire car,
4 correct?

5 A That's correct. But --

6 Q Thank you, sir. That he was my question.

7 And then in photographs and videos, the lighting may
8 affect how well you can see a car, right?

9 A Well, that's what I was about to speak about.

10 Q Is it -- yes or no?

11 A Yes, because when as a car moves down the street, it's
12 passing -- say there's a streetlight nearby or head lamps or
13 on in a different vehicle. As that car moves, those lighting
14 changes will highlight different aspects of the vehicle, body
15 lines, different contours.

16 Q Sometimes an image or a video will be out of focus,
17 right? It'll be blurred?

18 A Yes.

19 Q Okay. Those kinds of things will make it difficult to
20 use photos and videos to make an identification or comparison,
21 right?

22 A Absolutely.

23 Q Okay. Now, you testified earlier about your opinion that
24 these white sedans we saw in all these videos and images were
25 one in the same, that was your opinion, right?

LEHN - CROSS - MR. SER

1509

1 A We were discussing the 2003 to '5 Honda Accord.

2 Q Right. And it's your opinion that the same car appears
3 in all of those videos and images that you were examining?

4 A Yes, it does.

5 Q You focused in particular, it seemed, on the rear -- the
6 back end of this white sedan, right?

7 A Well, I looked at the entire car, because I had images of
8 the entire vehicle. What I'm doing is --

9 Q Let me rephrase that was question. That was a bad
10 question on my part.

11 You focused, for example, on some missing letters on
12 Accord badge on the trunk lid on the back of the white sedans,
13 right? That was one of the --

14 A That was --

15 (Simultaneous Crosstalk).

16 (Court reporter interrupts for clarification.)

17 Q I'm sorry, I'll repeat the question.

18 That was one of the points of comparison you were
19 looking at in all of these different photos and videos?

20 A Yes. That was just one of many aspects.

21 Q You were looking at the other, I think you mentioned, the
22 Honda badge, that is the letter H and where it was position on
23 the back of the trunk lid, correct?

24 A Yes.

25 Q Okay. You were also looking at how the bumper appeared,

LEHN - CROSS - MR. SER

1510

1 correct?

2 A The shape of it.

3 Q Correct.

4 A Yes.

5 Q Okay. You were looking at where you said an LX logo
6 would appear, correct?

7 On the rear end of the white sedan, you said below
8 one of the taillights there would be have been an LX badge or
9 something, correct?

10 A Not an LX badge. If there was a badge there, that would
11 indicate a V6, from the factory.

12 Q Okay. But a badge, nonetheless, on the back end, right?

13 A I didn't identify a badge. I said a mark.

14 Q Okay. So a mark on the back beneath that right
15 taillight, correct?

16 A Yes.

17 Q Okay. So we have four or five of these points of
18 comparison just along the backside of the white sedan that you
19 were relying on, correct?

20 A Yes. In order to identify the 2003 to '5 Honda Accord.

21 Q But you also used those points of comparison to testify
22 that you believed -- it was your opinion -- that the white
23 sedan was one in the same in all these different photos and
24 videos as well, correct?

25 A Well, taking --

LEHN - CROSS - MR. SER

1511

1 Q Yes or no, sir? It's just a yes-or-no question?

2 A Can you repeat it for me?

3 Q You relied on these points of comparison also in
4 rendering an opinion that that white sedan was one in the same
5 in all these videos and photos, correct?

6 A With other points, yes.

7 Q But those five were points you relied on, right?

8 A That was part of it.

9 Q So yes?

10 A Yes.

11 Q Okay. Now, you testified earlier about some of these
12 modifications that are made to the vehicle. You said that
13 these were after-market modifications, and you mentioned
14 something, you said, sometimes enthusiasts will make those
15 changes to cars, correct?

16 A Yes.

17 Q Okay. And by enthusiasts, you mean car buffs, right,
18 people who are really into cars?

19 A It could be. It could also be this bumper was cheaper
20 and readily available and it fit after the vehicle was in an
21 accident. I don't know.

22 Q Sometimes things like magazine articles talk about trendy
23 modifications to be made to cars, right?

24 A Yes.

25 Q Okay. Sometimes these car shows on T.V. talk about these

LEHN - CROSS - MR. SER

1512

1 modifications that can be made to these cars now too, right?

2 A Yes.

3 Q Sometimes you go to car shows and you see these trendy
4 modifications that people are making, right?

5 A Yes.

6 Q Because it looks cool, people like the appearance, right?

7 A That's the whole point.

8 Q Right. And you certainly know more about it than I do.

9 But it seems like modifications, right, at least
10 in this case, use parts from other model years in some
11 instances, right?

12 That's what you said?

13 A It appears to share similar characteristics with the
14 front bumper and grille of a 2006 or '7.

15 Q Okay. And that's a standard part that you would have to
16 order from, say, Honda or some other company that mimics,
17 right?

18 A Or you could get it from a junk yard or where ever.

19 Q Point well taken. But those are all the options that
20 you'd have to be able to get that part, right?

21 A EBay, et cetera, yes.

22 Q Okay. And there are more than one part available we
23 assume, right?

24 I mean, more than one person can do these
25 modifications on a vehicle, right?

LEHN - CROSS - MR. SER

1513

1 A Absolutely. But --

2 Q And you said earlier that, you know, obviously, with the
3 magazine, the television, people are making these
4 modifications because they're trendy, right?

5 A They're inspired by, say, culture. I assume that's where
6 you're going, is it?

7 Q I get to ask the questions. I appreciate it. We can
8 have a great conversation later.

9 But here's my point, I guess: The cosmetic issues
10 that you cite on the back end of the Honda, those would be
11 more particular as far as making identifications, right?

12 A Not necessarily.

13 Q Well, if multiple cars can have similar modifications
14 cosmetic things that aren't likely to be identical on multiple
15 cars may be a better indicator for identification purposes,
16 correct?

17 A Just the same as my identification was made taking into
18 account the totality of all the different photos and videos
19 that I can see of this car, the same holds true to this
20 specific car where the total of all of these modifications and
21 the damage makes it unique and identifiable.

22 Q Right. But the cosmetic things that you noticed on the
23 back of the car like the missing letters on the Accord badge,
24 that's very distinctive, correct?

25 A It's distinctive.

LEHN - CROSS - MR. SER

1514

1 Q Okay.

2 MR. SER: Can we please bring up GX 459. All right.

3 (Exhibit published.)

4 Q This is what you testified was a 2003 to 2005 white Honda
5 Accord, correct?

6 A Yes, sir.

7 Q Okay. Now, this is a side view of the driver's side of
8 the car, correct?

9 A Yes, sir.

10 Q You cannot see the backside of the car, that is where the
11 license plate or the Accord logo would be, correct?

12 A No. But the taillight is there, the rear quarter
13 panel --

14 Q I understand that. I understand those for purposes of
15 identifying the make and model of the car, but my question
16 isn't whether you can see quarter panel and taillight, the
17 question is, based upon this picture, you can't see the Accord
18 emblem on the trunk lid, correct?

19 A No. But I can see the missing pigment in the
20 headlight --

21 Q Sir, my question is, you can't see the Accord logo on the
22 trunk lid in the back, correct?

23 A No.

24 Q But you agreed with me three minutes ago was a very
25 distinctive cosmetic feature of the car you're looking at,

LEHN - CROSS - MR. SER

1515

1 right?

2 A One of the distinctive.

3 Q Okay.

4 MR. SER: Can you go to Page 2 of that exhibit.

5 Q Sir, this is the second picture, same car we were just
6 discussing, right?

7 A Yes, sir.

8 Q And you'd agree you can't see that Accord badge here on
9 the trunk of this vehicle, right?

10 A No.

11 Q Okay. Good. Making progress.

12 MR. SER: Can you go to the third picture.

13 Q Okay. This is the same vehicle we were just looking at,
14 right?

15 A Yes.

16 Q And again, now we're looking at the passenger side front
17 end of the same white sedan, correct?

18 A Yes, sir.

19 Q And you can't see the Accord logo on the back of the
20 trunk on this one, either?

21 A No, sir.

22 MR. SER: Can we go to the next picture.

23 Q And again, I won't belabor the point, this is the same
24 white sedan, right?

25 A Yes.

LEHN - CROSS - MR. SER

1516

1 Q Here we can only see the driver's side and front left of
2 the car, right?

3 A Yes.

4 Q And you cannot see that distinctive Honda -- I'm sorry,
5 Accord badge on the back of the trunk?

6 A No.

7 Q Okay.

8 MR. SER: You can take that down.

9 Can we bring up GX 317, please. Pause it at the
10 start.

11 (Exhibit published.)

12 Q All right. This is a 9-second video, right?

13 Is it on your screen there?

14 A Yes, it is.

15 Q And everyone can see it because it's in evidence.

16 This is a 9-second video, right? On the bottom
17 right corner.

18 A Yes, it is.

19 Q The camera is being held by somebody who is walking
20 around as we can tell, right?

21 A I assume, yes.

22 MR. SER: Can you play it.

23 (Video recording played.)(Video recording stopped.)

24 Q We saw some feet at the bottom there.

25 MR. SER: You can pause it.

LEHN - CROSS - MR. SER

1517

1 Q Someone walking around probably holding some sort of
2 iPhone, right?

3 A I don't know if it's an iPhone --

4 (Simultaneous Crosstalk).

5 (Court reporter interrupts for clarification.)

6 Q But we agree, it's someone walking around holding a
7 recording device, right?

8 A Yes.

9 Q Not on a tripod?

10 A No.

11 Q And the camera is being held at an angle that would be
12 above, let's say, for example, the trunk lid looking down,
13 correct?

14 A Yes.

15 Q Okay. It's not straight on the back of that car?

16 A No, it's not.

17 Q And the person appears to walk past the trunk area of the
18 vehicle and making its way -- making his or her way around to
19 the right side of that car, correct?

20 A Correct.

21 Q Okay. And maybe a second or two glimpse at the back end
22 of that Accord, right?

23 A Yes.

24 Q Okay. And the remainder of the video looks like it's --
25 we can play it from here, we can look at it.

LEHN - CROSS - MR. SER

1518

1 The remainder of that video captures, look likes
2 he's focusing on the right wheel in the rear, right?

3 A Mm-hmm.

4 Q Yes?

5 A Yes.

6 Q Okay. Thanks.

7 MR. SER: Can you bring up GX 318. And pause it at
8 the beginning.

9 (Exhibit published.)

10 Q This, too, is another 9-second video that you have looked
11 at earlier, right?

12 A Mm-hmm.

13 Q And same thing, this one is a video recording by somebody
14 walking around holding a recording device?

15 A Yes.

16 Q So it's a bit unsteady, right?

17 A Yes.

18 Q Okay. And again the angle is downward on the car as far
19 as the point of view goes, right?

20 A That's correct.

21 Q And it is not positioned directly behind the back of the
22 car, correct?

23 A No, it's not.

24 Q Okay. Person making the recording here isn't on a knee,
25 right?

LEHN - CROSS - MR. SER

1519

1 A It appears to be standing.

2 Q Right.

3 MR. SER: And can we play the first five seconds and
4 then pause it.

5 (Video recording played.)(Video recording stopped.)

6 Q So it appears first five seconds, at least, are focused
7 on this back right wheel, and then the -- was that the
8 passenger side of the car?

9 A It is.

10 Q Can't see the trunk yet, right?

11 A No, sir.

12 Q That's a fairly dark picture too, right?

13 A Looking all the way off into the darkness, yes, it is.

14 Q Can't even see the right front wheel in that one.

15 MR. SER: All right. Can we play the video.

16 (Video recording played.)

17 MR. SER: All right. Pause.

18 (Video recording stopped.)

19 Q It's right around there that we can now see the back of
20 this car, right?

21 A We started to, yes.

22 MR. SER: Can we finish playing it.

23 (Video recording played.)(Video recording stopped.)

24 Q And we really don't see any more of it, do we?

25 A I mean, you see those 2003 to '5 Honda Accord.

LEHN - CROSS - MR. SER

1520

1 Q Exactly. But it's a very quick glimpse at the -- where
2 the Accord logo would be on that trunk, right? Not very long?

3 A But that's why videos have pause buttons.

4 Q They do. You are right.

5 But the angle is, again, looking down on it?

6 A A little bit, yeah.

7 Q It's not directly behind it?

8 A No, sir.

9 Q And again, we agreed it was kind of a dark setting there,
10 right?

11 A When you zoom all the way out to the front end of the
12 vehicle. But the camera appears to have a light on it.

13 Q Okay.

14 MR. SER: Can we bring up 319. And we're going to
15 pause it at the start.

16 All right. Why don't I play that video.

17 (Video recording played.)

18 MR. SER: You can pause it there.

19 (Video recording stopped.)

20 Q You've watched this one, correct, sir?

21 A Yes.

22 Q You'd agree with me you cannot see any part of the back
23 bumper or back trunk lid on this one?

24 A Can you play the start again?

25 Q Sure. And I'll rephrase that.

LEHN - CROSS - MR. SER

1521

1 (Video recording played.)

2 You cannot see where the Honda Accord badge would be
3 on the trunk lid of this vehicle.

4 MR. SER: Pause it there.

5 (Video recording stopped.)

6 A Honda Accord badge, no. Because you said trunk lid.

7 Q I know. I had to correct myself. You are correct.

8 MR. SER: I don't think I have anything further,
9 Your Honor.

10 THE COURT: All right. Anything further? All
11 right.

12 MS. MOORE: No, Your Honor.

13 THE COURT: All right. Thank you. You can step
14 down.

15 (The witness was excused.)

16 THE WITNESS: Have a great day.

17 THE COURT: Call your next witness.

18 MS. LASH: Your Honor, the Government calls David
19 Yu.

20 Your Honor, it's an in-custody witness, and I have
21 been told he's on his way. He should be here momentarily.

22 THE COURT: Bring him over here, please.

23 (The witness takes the stand.)

24 (Continued on the following page.)
25

DAVID YU - DIRECT - MS. LASH

1522

1 DAVID YU, called as a witness, having been first duly
2 sworn/affirmed, was examined and testified as follows:

3 THE COURTROOM DEPUTY: Remain standing and raise
4 your right hand, please.

5 (The witness was sworn and/or affirmed by the
6 courtroom deputy.)

7 THE WITNESS: Yes.

8 THE COURTROOM DEPUTY: Can you please state and
9 spell your name, for the record.

10 THE WITNESS: David Yu, D-A-V-I-D Y-U.

11 THE COURTROOM DEPUTY: You may be seated. Thank
12 you.

13 MS. LASH: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MS. LASH:

16 Q Good afternoon, Mr. Yu.

17 A Good morning.

18 Q Mr. Yu, have you ever agreed to kill anyone?

19 A Yes, ma'am.

20 Q Were you told the name of the person that you agreed to
21 kill?

22 A No.

23 Q Who asked to you kill this person?

24 A You You.

25 Q Does You You go by any other name?

DAVID YU - DIRECT - MS. LASH

1523

1 A Yes.

2 Q What name is that?

3 A Eddie.

4 Q What was your relationship to You You at the time he
5 asked you to kill this person?

6 A That was my best friend.

7 Q I'd like to show you what's in evidence as Government's
8 Exhibit 2.

9 MS. LASH: And Ms. Campbell...

10 (Exhibit published.)

11 Q Mr. Yu, who's the person pictured in Government
12 Exhibit 2?

13 A That's You You.

14 Q Were you promised anything to kill this person?

15 A Yes.

16 Q What were you promised?

17 A He promised me a large sum of money, and then later on,
18 he promised me that he was going to buy my mom a house.

19 Q What happened to the person you were hired to kill?

20 A He got murder.

21 Q How?

22 A He got shot.

23 Q When the victim was shot, where were you?

24 A I was a couple of blocks away.

25 Q And were you on foot or in a vehicle?

DAVID YU - DIRECT - MS. LASH

1524

1 A I was in a vehicle.

2 Q What vehicle were you in?

3 A I was in a white van.

4 Q Mr. Yu, I want you to look around the courtroom.

5 Do you see anyone else who was there that night the
6 person was killed?

7 A Can you say that again.

8 Q I said, Mr. Yu, can you look around the courtroom and
9 tell me if you see anyone else who was there the night the
10 person was killed?

11 A Yes.

12 Q Can you point to the point and identify that person by an
13 article of clothing that they're wearing?

14 A He's wearing a black blazer and a tie, and a red tie.

15 THE COURT: The record will reflect the
16 identification of the defendant Zhe Zhang.

17 BY MS. LASH:

18 Q What did this person do during the murder?

19 A Who?

20 Q Where was this person when you saw him on the night of
21 the murder?

22 A I saw him in a white car.

23 Q Now, Mr. Yu, I want to you to look around the room again.

24 Is there anyone else who is sitting in this
25 courtroom who was part of the plan to murder this person?

DAVID YU - DIRECT - MS. LASH

1525

1 A Yes.

2 Q And can you point that person and identify them by an
3 article of clothing they're wearing?

4 A He got a blue blazer on.

5 Q What color tie?

6 A Gray.

7 Q And what position at the table is this person sitting in?

8 A On the left side.

9 Q And is he the first person, the second person, the third
10 person?

11 A The first person.

12 Q Can you look again.

13 MS. LASH: I think the witness is confused, Your
14 Honor.

15 THE COURT: Let me just ask a question, just for
16 purposes of identification, everyone at the defense table,
17 take their mask off. Everybody. Okay.

18 BY MS. LASH:

19 Q So Mr. Yu, can you tell me if anyone else sitting in this
20 courtroom was part of the plan to murder the person that was
21 killed that night?

22 A Yes.

23 Q And can you identify the person by the number of their
24 position at the table? Are they number one, or number two or
25 number three or four?

DAVID YU - DIRECT - MS. LASH

1526

1 What number in are they from the left side?

2 A He number two.

3 MS. LASH: Your Honor, can the record reflect that
4 the witness has identified the defendant, Allen Yu.

5 THE COURT: Yes. The record will so reflect.

6 You can put your masks back on.

7 BY MS. LASH:

8 Q The person that you just identified, Mr. Yu, what was
9 their role in the murder?

10 A What are you talking about?

11 Q The person that you identified, how did you know him?
12 What was his name?

13 A Allen?

14 Q Yes.

15 A That was the uncle of You You.

16 Q And what was his role in the murder?

17 A He ordered it. He orchestrated the hit.

18 Q Mr. Yu, have you pled guilty to your role in this murder?

19 A Yes.

20 Q Are you testifying today pursuant to a cooperation
21 agreement?

22 A Yes.

23 Q We'll come back to the murder in a moment.

24 Mr. Yu, I want to take a step back and ask you a
25 couple of questions about yourself.

DAVID YU - DIRECT - MS. LASH

1527

1 A All right.

2 Q How old are you?

3 A I'm 35.

4 Q Where did you grow up?

5 A In Flushing, Queens.

6 Q Do you have any nicknames?

7 A Yes.

8 Q What are they?

9 A Potato, buddha, and Billy.

10 Q Why are you called potato?

11 A When I was younger I was a little chubby kid, and one of
12 my big bros named me that.

13 Q Were you wearing anything in particular when they gave
14 you that nickname?

15 A I had a brown hoodie on.

16 Q And what's the -- do you speak any other languages
17 besides English, Mr. Yu?

18 A Yes.

19 Q What language do you speak?

20 A I speak Korean.

21 Q And what's the Korean word for potato.

22 A Gamja.

23 Q Who took care of you as a child, Mr. Yu?

24 A My parents.

25 Q Do you have any siblings?

DAVID YU - DIRECT - MS. LASH

1528

1 A Yes, I have a little brother?

2 Q Are you married?

3 A No.

4 Q Do you have any children?

5 A No.

6 Q And you said you spoke Korean.

7 How did you learn Korea?

8 A My mom taught me how to speak Korean.

9 Q Mr. Yu, did you attend school in New York?

10 A Yes.

11 Q Where did you attend high school?

12 A In Queens.

13 Q And what was the name of the high school?

14 A Robert K. Kennedy High School.

15 Q Did there come a time where you were in high school and
16 you joined a gang?

17 A Yes.

18 Q What grade were you in at school at the time?

19 A I was, like, ninth grade.

20 Q What gang did you join?

21 A I joined MMP.

22 Q What does MMP stand for?

23 A Mo ming pie.

24 Q And what language is mo ming pai?

25 A It's Chinese.

DAVID YU - DIRECT - MS. LASH

1529

1 Q And what does that translate to in English, to your
2 knowledge?

3 A It's like a slang saying, like, no named gangsters.

4 Q Why did you join MMP?

5 A A circle of my friends was MMP at that time.

6 Q Which friends in particular?

7 A You You.

8 Q How did you come to meet You You?

9 A I met him through a couple of my friends.

10 Q And how old were you at the time?

11 A I was, like, 15.

12 Q Did you and You You attend school together?

13 A No.

14 Q So in MMP, who did you report to, Mr. Yu?

15 A I reported to some dude named Shogun.

16 Q Was that his real name?

17 A No.

18 Q And what was Shogun's rank within the gang?

19 A He was a street boss.

20 Q How high a rank is a street boss?

21 A It's pretty high.

22 Q Did you make any money as a member of MMP?

23 A Yes.

24 Q How did you make money?

25 A I sold drugs, I worked in a gambling house.

DAVID YU - DIRECT - MS. LASH

1530

1 Q You said you sold drugs?

2 A Yes.

3 Q What drugs did you sell?

4 A I sold coke -- cocaine, marijuana, and ecstasy.

5 Q When did you start selling -- let's take marijuana
6 first -- marijuana?

7 A Like, beginning of high school.

8 Q And when did you start selling cocaine and ecstasy?

9 A Like, end of high school.

10 Q Approximately when you started selling marijuana,
11 approximately how much marijuana were you selling in a week's
12 time?

13 A Likes, a ounce or two.

14 Q And how much money would you earn from selling an ounce
15 of marijuana at that time?

16 A A couple hundred dollars.

17
18 (Continued on the following page.)
19
20
21
22
23
24
25

D. Yu - direct - Lash

1531

1 DIRECT EXAMINATION

2 BY MS. LASH: (Continuing)

3 Q Who did you sell the marijuana to?

4 A To my friends.

5 Q How about cocaine, how much cocaine were you selling when
6 you started selling cocaine at the end of high school?

7 A Almost 50 grand at a time.

8 Q And how much money could you earn from selling 50 grams
9 of cocaine?

10 A A couple hundred dollars.

11 THE COURT: How much?

12 THE WITNESS: A couple hundred dollars.

13 Q You mentioned ecstasy as well.

14 When you were selling ecstasy at the end of high
15 school, how much ecstasy were you selling?

16 A About a hundred, 200 pills.

17 Q And how much money could you earn from selling that
18 quantity of ecstasy?

19 A A couple hundred dollars.

20 Q What did you do with the money that you earned from those
21 drug sales?

22 A I bought clothes. I bought -- I bought sneakers. Like,
23 I bought accessory stuff.

24 Q Were you also using drugs at this time?

25 A Yes, ma'am.

D. Yu - direct - Lash

1532

1 Q Which ones?

2 A I was smoking marijuana and I was popping E pills at that
3 time.

4 Q You mentioned you also made money as a member of MMP
5 working at a gambling house; is that right?

6 A Yes.

7 Q What did you do at the gambling house?

8 A I just watched the door.

9 Q And when you watched the door, what were you looking for?

10 A Customers, police.

11 Q Did you carry a weapon?

12 A Yes.

13 Q What kind of weapon?

14 A A baton stick.

15 Q Any other weapons?

16 A That's it.

17 MR. KOUSOUROS: I'm sorry, Judge, I can't hear.

18 THE COURT: What did you say?

19 THE WITNESS: That's it.

20 THE COURT: That's it?

21 THE WITNESS: That's it.

22 BY MS. LASH:

23 Q Mr. Yu, I'll just have you speak, if you could speak
24 directly the microphone.

25 A All right.

D. Yu - direct - Lash

1533

1 Q You said you carried a baton stick while you worked at
2 the gambling house, right?

3 A Yes, ma'am.

4 Q Did you use the baton stick on customers or other
5 individuals at the gambling house?

6 A No.

7 Q Was there any other way you made money while you were a
8 member of MMP?

9 A I collected debt payments like before a few times.

10 Q What were the debts for?

11 A I don't know.

12 Q Who directed you to collect the debts?

13 A My older brother.

14 Q Approximately how many times did you do this?

15 A A few times, a few times.

16 Q When you were collecting debts for other members of MMP,
17 did you carry a weapon?

18 A Yes.

19 Q What kind of weapon?

20 A A baton stick.

21 Q Did you ever use your baton stick to collect a debt?

22 A Yes.

23 Q And how did you use it?

24 A Like did I use it on somebody?

25 Q Yes.

D. Yu - direct - Lash

1534

1 A No, ma'am.

2 Q Mr. Yu, did you graduate from high school?

3 A Yes.

4 Q What year did you graduate?

5 A 2006.

6 Q How did you do in school?

7 A I passed.

8 Q What was your plan after high school?

9 A I wanted -- I wanted to get into special education.

10 Q And why did you want to get into special education?

11 A It was like a program in my church that I volunteered
12 with special education kids, and then like I grew a heart for
13 them. I just wanted to learn more about them at that time.

14 Q After you graduated high school in 2006, how were you
15 making money?

16 A I was still selling drugs.

17 Q Did there come a time where you went to prison?

18 A Yes, ma'am.

19 Q How old were you?

20 A I was 18, 19.

21 Q What happened?

22 A I got caught with a gun in and a vest.

23 THE COURT: You got caught what?

24 THE WITNESS: I got caught with a gun and bullet
25 proof vest and I caught some drugs.

D. Yu - direct - Lash

1535

1 Q What drugs did you have on you at the time?

2 A Cocaine.

3 Q And why did you have a gun and a bullet proof vest?

4 A At that time, there was this bar that, again, like we was
5 watching over. Somebody came over there and he refused to pay
6 the bill, so one of my big boss called us. I came over. He
7 told me to take care of it. He gave me a gun and he put the
8 vest on and then he said, Take care of the problem for me.
9 So, I went. And I remember calling one of my friends that was
10 at the bar that -- that -- that they didn't want to pay the
11 bill. I talked to him. I talked to him into paying the bill.
12 He ended up paying the bill, so the beef got squashed. I
13 returned the gun and vest back to Shogun, and then cops came.
14 And then they searched his car and they found the gun and vest
15 on him, and then I just took the blame for it.

16 Q Did you plead -- sorry.

17 Did you plead guilty in this case?

18 A Yes, ma'am.

19 Q And were you honest about the police about why you had
20 the gun and the bullet proof vest?

21 A No.

22 Q What did you tell them?

23 A I told them it was mine.

24 Q And what was the truth?

25 A It wasn't mine.

D. Yu - direct - Lash

1536

1 Q Why didn't you tell the police the truth?

2 A Because at that time Shogun was on parole, so I didn't
3 want him to get into trouble.

4 Q Remind us who was Shogun to you.

5 A That was my big bro.

6 Q And what was his rank in the MMP gang?

7 A He was a street boss at that time.

8 Q Were you sentenced in that case?

9 A Yes.

10 Q What was your sentence?

11 A Two-and-a-half years.

12 Q Where did you serve that sentence?

13 A On Rikers and Greene.

14 Q Mr. Yu, what, if anything, happened while you were
15 incarcerated at Rikers serving this sentence?

16 A I stopped representing MMP and I turned Blood.

17 Q What do you mean when you say you turned Blood?

18 A I joined another gang.

19 Q What are the Bloods?

20 A A street gang.

21 Q You were a member of MMP at the time, why join the
22 Bloods?

23 A At that time I felt like Shogun, like, I felt like he
24 left me for -- like abandoned me. I felt like he played me,
25 so, like, I stopped showing love to him. I started hanging

D. Yu - direct - Lash

1537

1 out with the Bloods who were in jail and they asked me to join
2 and I said yeah.

3 Q Did you join any particular subset of the Bloods street
4 gang?

5 A Yes.

6 Q What set did you join?

7 A Stone Gorillas -- I joined Gorilla Stone Gangsters.

8 Q At the time that you joined the Bloods, did you assault
9 anyone?

10 A Yes.

11 Q Who did you assault?

12 A I cut a Latin King dude.

13 Q And, Mr. Yu, what are the Latin Kings?

14 A It's another -- it's another street gang.

15 Q And what is the Latin Kings' position to the Bloods?

16 A They're enemies.

17 Q You said you cut him. Can you explain what did you do?

18 A I cut him with a -- with a scalpel.

19 Q And where did you cut him?

20 A I cut him on top of the lip.

21 Q How did you get a scalpel?

22 A Somebody gave it to me.

23 THE COURT: Was this while you were in prison?

24 THE WITNESS: Yes, ma'am.

25 Q After that attack, were you accepted as a member of the

D. Yu - direct - Lash

1538

1 Bloods?

2 A I was already accepted. It's just I had a personal
3 problem with the dude that I cut.

4 Q Were you punished for this incident while you were at
5 Rikers?

6 A No, I got away with it.

7 Q When were you released from this sentence, Mr. Yu?

8 A 2010, December.

9 Q After your release in December 2010, what was your
10 status?

11 A I was on parole.

12 Q What's parole?

13 A I had to report to a parole officer. I had to follow a
14 curfew. I had to get a job. I can't get no police contact.
15 And I got to follow curfew. That's it. Yeah.

16 Q What were your plans after you were released from prison
17 in December of 2010?

18 A I was going to school again.

19 Q Did you enroll in an institution?

20 A Yes.

21 Q Did you attend any classes?

22 A No.

23 Q Why not?

24 A I had to wait for the next -- the next semester to start.

25 Q After your release from prison in 2010, what was your

D. Yu - direct - Lash

1539

1 relationship like with You You?

2 A That was my best friend.

3 Q Did you see You You after you were released from prison?

4 A Yes.

5 Q What happened?

6 A He offered -- he had a bar that he was running and he
7 asked me to run the bar with him.

8 Q And what was the name of this bar?

9 A Yello.

10 Q Where was it located?

11 A In Flushing.

12 Q Was this bar properly licensed?

13 A No.

14 Q How did you make money from running an unlicensed bar?

15 A I didn't make no money out of it.

16 Q And what was your role in connection with the bar?

17 A Nothing really, I was just there with him.

18 Q Did you ever commit a robbery in connection with this
19 bar?

20 A Yes.

21 Q Who participated in the robbery?

22 A Me, You You, and some kid named Shorty.

23 Q What did you do during the robbery?

24 A I came into the bar where You You was at and I acted like
25 You You owed me -- he owed money, and some -- some dude that

D. Yu - direct - Lash

1540

1 sells the liquor bottles to him, he was there. And me and
2 this kid Shorty, we went up in there and we asked You You,
3 Where's my money at? And then we ended up just robbing both
4 of them.

5 Q So, who did you rob in this robbery?

6 A The liquor man.

7 Q What did you take from him?

8 A A couple bottles of liquor and \$1,000.

9 Q Did anyone have a weapon?

10 A Yes.

11 Q What weapon did they have?

12 A He had a kitchen knife.

13 Q Who had the kitchen knife?

14 A Shorty had it.

15 Q What did Shorty do with the kitchen knife?

16 A He just showed -- nothing really, just scaring him.

17 Q Was the the driver hurt?

18 A No, nobody was hurt.

19 Q You said you weren't making any money from your role at
20 this unlicensed bar.

21 How were you making money at the time?

22 A I was selling ketamine at that time.

23 Q What's ketamine?

24 A It's a party drug.

25 Q And why did you start selling ketamine?

D. Yu - direct - Lash

1541

1 A There was these kids, Shorty and these other couple kids
2 that -- that was hanging out on me and they was selling
3 ketamine at that time, and I just became -- I just started --
4 I just joined them to make money with them.

5 Q And what was your role in the ketamine sales?

6 A I was basically the muscle.

7 Q And what does it mean to be the muscle?

8 A Any problem they had, like, I took care of it.

9 Q When you started selling ketamine after your release from
10 prison in 2010, how much ketamine were you selling at a time?

11 A An ounce or two.

12 Q In what time period?

13 A Like in a week, less than a week, yeah.

14 Q How much would you purchase an ounce of ketamine for?

15 A At that time, it was like \$400.

16 Q And how much could you earn from selling an ounce of
17 ketamine?

18 A 600, 500.

19 Q Did there come a time where you were selling more than an
20 ounce of ketamine?

21 A Yeah.

22 Q How much ketamine were you selling at that time?

23 A I was selling wholesale. I was doing a kilo at a time.

24 Q And how many ounces are in a kilo?

25 A Thirty-five.

D. Yu - direct - Lash

1542

1 Q What would you do with the kilo of ketamine?

2 A I sold it one shot.

3 Q And how much money would you earn from selling a kilo of
4 ketamine?

5 A At that time I was making like a thousand.

6 Q Where were you customers located?

7 A In Flushing.

8 Q And at that time, were there other dealers in Flushing
9 selling ketamine?

10 A Yeah.

11 Q So, that was your competition?

12 A Yes.

13 Q How did you interact with your competition?

14 A I robbed them.

15 Q And what happened after you would rob your competition?

16 A I'd tell them stop selling it.

17 Q Did they agree?

18 A Yeah, but they -- they -- they still sold it, though.

19 Q And in the course of your ketamine sales, did you ever
20 have an issue with one of the people you sold ketamine with?

21 A Yes.

22 Q And who was that?

23 A It was Shorty.

24 Q And what did Shorty do?

25 A He started doing his own thing.

D. Yu - direct - Lash

1543

1 Q And what did you do after you realized Shorty was selling
2 ketamine on his own?

3 A Ended up robbing him.

4 Q What did you take?

5 A His money.

6 Q How much money?

7 A It was 60,000.

8 Q Where did you take the 60,000 from?

9 A His house.

10 Q How did you get inside his house?

11 A His landlord opened the door for me.

12 Q What did you do with the \$60,000?

13 A I broke -- I broke some -- I shared it with my friends.

14 Q You mentioned that after your release from prison in 2010
15 you were on parole; is that right?

16 A Yes, ma'am.

17 Q Did you ever violate the terms of your parole?

18 A Yes, ma'am.

19 Q How many times?

20 A Three times.

21 Q Did you say three times?

22 A Yes, ma'am.

23 Q And how did you violate the terms of your parole?

24 A On curfew, mostly curfews.

25 Q What happened when you violated your parole?

D. Yu - direct - Lash

1544

1 A Sent me back to jail.

2 Q During this time, did you ever spend any time in a
3 halfway house?

4 A Yes.

5 Q And what's a halfway house?

6 A It's -- it's like a housing unit where, like, if you
7 don't have a address or if the parole denies your address,
8 they send you to a halfway house or a shelter.

9 Q Did you violate the terms of your parole while you were
10 at the halfway house?

11 A Yes.

12 Q What did you do?

13 A I didn't want to stay there, so the person that was
14 running the program, I was giving him \$50 to sign my name into
15 the login book.

16 Q And what happened after you paid this person \$50 to sign
17 your name into the login book?

18 A One week -- one week I didn't pay him, so he told my
19 parole officer.

20 Q And what happened when your parole officer found out?

21 A She told me to come in and I ran.

22 Q And what happened after that?

23 A I turned myself in and then I did -- I did some -- she
24 send me back to jail.

25 Q Mr. Yu, were you arrested again in June of 2013?

D. Yu - direct - Lash

1545

1 A Yes.

2 Q What happened?

3 A I got caught -- I got pulled over on a traffic stop and
4 they searched my car and they found drugs on me.

5 Q What drugs did they find?

6 A They found -- they found weed on me. They found -- they
7 found cocaine, Xanax, and ketamine.

8 Q Where were you when this happened?

9 A I was in Bayside.

10 Q And what borough is that in?

11 A In Queens.

12 Q What happened with that case?

13 A I got sentenced to possession of an illegal substance and
14 they -- and they R&R'd me.

15 Q Did you spend any time in jail after that?

16 A No, ma'am.

17 Q In 2013, what was your relationship like with You You?

18 A That was still my best friend.

19 Q Mr. Yu, you testified about the robbery of a delivery
20 driver at the bar Yello.

21 Have you ever participated in any other robberies?

22 A Yes.

23 Q Approximately how many robberies have you participated
24 in?

25 A I can't -- I can't recall.

D. Yu - direct - Lash

1546

1 Q Can you repeat that?

2 A I can't -- I can't say, like, the right number.

3 Q And why can't you say the right number?

4 A Because there are a lot of robberies.

5 Q Did you ever commit any other robberies with You You?

6 A Yes.

7 Q What other robberies did you commit with You You?

8 A We robbed one of his friends at a parking lot, me and
9 somebody else, we pretend we was police. We pulled the kid
10 over. We searched the car. We took the money and the drugs.

11 Q How did you pretend that you were a police officer?

12 A He was parked somewhere, we just ran up on the car and
13 then we showed him a fake badge.

14 Q You said you took the drugs. What drugs did you take?

15 A He only had a pound of weed on him.

16 Q Did you take anything else?

17 A Yeah, like a thousand dollars.

18 Q Did anyone use a weapon in this robbery?

19 A No, there was no weapon involved.

20 Q And when approximately did this occur?

21 A Oh, I don't remember.

22 Q Were you ever charged in connection with this robbery?

23 A No, ma'am.

24 Q Did you commit any other robberies with You You?

25 A Yes.

D. Yu - direct - Lash

1547

1 Q What did you do?

2 A We robbed his other friend.

3 Q Where was this person located?

4 A Like in lower Manhattan.

5 Q And who participated in this robbery?

6 A Me, You You, and some kid named John Park.

7 Q What happened?

8 A You You went to go pretend that he was going to buy weed
9 off this kid. He rang the doorbell. The kid opened the door.
10 And then we just bum-rushed in there.

11 Q What was your role in this robbery?

12 A Take everything.

13 Q What did you do while you were inside this person's
14 apartment?

15 A It was supposed to be just him, but his girlfriend was
16 there. She started yelling and she started running to the
17 kitchen to grab a knife, so I had -- so I -- so, I punched
18 her.

19 Q And what happened after you punched her?

20 A I knocked her out.

21 Q Did anyone have a weapon in this robbery?

22 A Yes.

23 Q What weapon?

24 A A fake BB gun.

25 Q And who had the fake BB gun?

D. Yu - direct - Lash

1548

1 A John.

2 Q What did you steal in this robbery?

3 A Like two pounds of weed.

4 Q And were you charged in connection with this robbery?

5 A No, ma'am.

6 Q Do you remember when approximately this happened?

7 A No, ma'am.

8 Q What other robberies have you committed, Mr. Yu?

9 A I robbed some dude that worked in a cash checking spot.

10 Q What's a cash checking spot?

11 A It's like -- it's like -- it's like a Western Union.

12 Q And where was this cash checking spot located?

13 A In Brooklyn.

14 Q How did you get the idea for this robbery?

15 A One of the workers gave us the rundown saying that every
16 Friday and Saturday the boss leaves with a large sum of money.
17 So me and my friend, we staked out. And then one Friday, my
18 boy said, Today is the day. We saw him coming out with a bag
19 and then while we was going, a girl came with him. My boy
20 knocked him out and the girl started yelling. I knocked her
21 out. We took the bag and we ran.

22 Q And how did the person that you were with knock out the
23 man with the bag?

24 A Hit him with a brass knuckle.

25 Q Where did he punch him?

D. Yu - direct - Lash

1549

1 A In the mouth.

2 Q And tell us again, what did you do with the woman that he
3 was with?

4 A I knocked her out.

5 Q How much money did you get in this robbery?

6 A 60,000.

7 Q What did you do with that money?

8 A I spent it.

9 Q Were you ever charged in connection with this robbery?

10 A No.

11 Q Do you remember approximately when this happened?

12 A 2013.

13 Q I want to ask you a couple more questions about that time
14 period, 2013, 2004.

15 A All right.

16 Q Did there come a time where you left the United States?

17 A Yes, I went to Korea.

18 Q Why did you go to Korea?

19 A I was smuggling weed to Korea.

20 Q How many times did you smuggle weed to Korea?

21 A A few times. A few times.

22 Q A few times?

23 A Yes.

24 Q Can you give me a number estimate?

25 A About six times.

D. Yu - direct - Lash

1550

1 Q About six.

2 How did you transport marijuana to Korea?

3 A I put it in my luggage.

4 Q And how much were you paid when you arrived with a pound
5 of marijuana?

6 A 40,000.

7 THE COURT: How much?

8 THE WITNESS: 40.

9 THE COURT: 40?

10 THE WITNESS: 40,000.

11 BY MS. LASH:

12 Q Why were you paid so much money, Mr. Yu?

13 A That's how much -- that's how much we was costed at that
14 time over there.

15 Q You said you estimated about six times you did this.

16 Were you ever detected by law enforcement?

17 A No, ma'am.

18 Q Upon your return to the United States, did you continue
19 to work with marijuana?

20 A Yes, ma'am.

21 Q What did you do?

22 A I went out to California and I trimmed marijuana for --
23 for a little bit and packaged it.

24 Q Approximately how long did you do that?

25 A No more than a year, like six months.

D. Yu - direct - Lash

1551

1 Q And after you trimmed the marijuana, what was done with
2 it?

3 A I packaged it.

4 Q You packaged it for what purpose?

5 A To get it shipped to New York.

6 Q Mr. Yu, we've discussed your narcotics sales and several
7 robberies that you've committed.

8 Have you ever owned a gun?

9 A Yes, ma'am.

10 Q Who kinds of guns did you own?

11 A I had .380 Special and I had a Glock 19.

12 Q When did you own the .380 Special?

13 A 2018, 2019.

14 Q And when did you own the Glock 19?

15 A Like 2016, '15.

16 Q In addition to these guns that you owned, did you have
17 access to other weapons?

18 A Yes.

19 Q Mr. Yu, have you ever fired a gun?

20 A Yes, ma'am.

21 Q Where have you fired a gun?

22 A In the park, the rooftops.

23 Q And what purpose did you fire a gun in the park?

24 A I wanted to see if my gun -- if my gun was a workable
25 gun.

D. Yu - direct - Lash

1552

1 Q What time of day did you do this?

2 A Like the middle of the night.

3 Q And how did you fire the gun?

4 A I shot it in the air.

5 Q The same question about the rooftop.

6 A Yeah.

7 Q Why did you fire a gun on a rooftop?

8 A The same reason.

9 Q Did you say the same reason?

10 A Yes, ma'am.

11 Q And, again, what time of day was it?

12 A Like the middle of the night, too.

13 Q Mr. Yu, have you ever shot anyone?

14 A No, ma'am.

15 Q Have you ever fired a gun at a person?

16 A No, ma'am.

17 Q Besides a firearm, have you carried other weapons?

18 A Yes, ma'am.

19 Q You mentioned a baton stick?

20 A Yeah.

21 Q What other weapons have you carried?

22 A I always carry a scalpel on me.

23 Q Anything else?

24 A A knife. And I used to carry a screwdriver when I was
25 little.

D. Yu - direct - Lash

1553

1 Q And a screwdriver?

2 A Yeah.

3 Q Let's start with the scalpel.

4 Besides the incident that you discussed where you
5 cut the Latin King in prison with the scalpel, have you ever
6 used a scalpel on anyone else?

7 A No, ma'am.

8 Q You mentioned a baton stick. Have you ever used a baton
9 stick to hit anyone?

10 A Yes, ma'am.

11 Q How many times?

12 A A few times.

13 Q Did you say a few times?

14 A Yes, ma'am.

15 Q You mentioned that you would carry a knife?

16 A Yes, ma'am.

17 Q Did you ever use the knife to cut anyone?

18 A No, ma'am.

19 Q You said when you were younger you had a screwdriver?

20 A Yes, ma'am.

21 Q Did you ever use the screwdriver --

22 A No, ma'am.

23 Q -- to hurt anyone?

24 A No, ma'am.

25 Q Mr. Yu, I would like to turn your attention to August of

D. Yu - direct - Lash

1554

1 2016.

2 Were you arrested in August of 2016?

3 A Yes, ma'am.

4 Q What happened?

5 A I was in Chinatown. I went to go buy some drugs off some
6 dude, and he ended up selling fake drugs. So I beat him up
7 and I took my money back, and he called the cops on me.

8 Q What type of drug were you attempting to buy?

9 A Ketamine.

10 Q And how did you know the ketamine was fake?

11 A I tried it and it wasn't it.

12 Q How much ketamine were you attempting to purchase from
13 this person?

14 A I bought an ounce off of him first.

15 Q And how much money were you going to pay him for that
16 ounce of ketamine?

17 A 1400, almost 1400 at that time.

18 Q You said this person called the police. Were you
19 charged?

20 A Yes.

21 Q With what?

22 A With robbery in the second degree.

23 Q After you were charged, Mr. Yu, were you released on
24 bail?

25 A Yes, ma'am.

D. Yu - direct - Lash

1555

1 Q And what is bail? What does that mean?

2 A Basically, you either put a property or you put 10
3 percent of the bonds, and then they release you on a
4 condition.

5 Q And what are some of the conditions of being on bail?

6 A I have to sign in every week to the bail bondsman and I
7 have to stay out of trouble.

8 Q Did you stay out of trouble when you were on bail?

9 A Yes, I think I did.

10 Q While you were on bail, did you do anything to avoid
11 going to prison in that robbery case?

12 A Yes, I did. Yeah.

13 Q What did you do?

14 A I tried to bribe the victim.

15 THE COURT: You what?

16 THE WITNESS: I tried to bribe the victim.

17 Q And how did you do that?

18 A One of my friends knew who he was, so I went through him
19 and then he offered him 5,000 not to go to court.

20 Q And do you know whether that individual was paid?

21 A No, not really. But I know he gave him a thousand first.

22 Q Do you know whether the individual still showed up to
23 court?

24 A Yes, ma'am, he did.

25 Q What happened with that case?

D. Yu - direct - Lash

1556

1 A I got charged.

2 Q Did you plead guilty?

3 A Yes, ma'am.

4 Q And were you sentenced?

5 A Yes, ma'am.

6 Q What was your sentence?

7 A One-and-a-half to three.

8 Q What does a sentence of one-and-a-half to three years
9 mean?

10 A It means like if you finish your programs on good
11 behavior, you do your vocational, you come home on early
12 release from one-and-a-half to three years.

13 Q When were you released from this prison sentence?

14 A 2018.

15 Q Do you remember when month?

16 A Yes, November.

17 Q What was your relationship like with You You in November
18 of 2018?

19 A That was my best friend.

20 Q We are going to go back to November of 2018 in a minute,
21 but first I want to direct your attention to July of 2019.

22 Were you involved in another robbery with You You?

23 A Yes, ma'am.

24 Q Who was the target of this robbery?

25 A I didn't know him.

D. Yu - direct - Lash

1557

1 Q And why did you understand this robbery was to take
2 place?

3 A You You asked me for help. He, basically -- well, this
4 is what he told me. He said, You got to give a
5 hundred-thousand to somebody to wash, but he's not gonna pay
6 him that. But he's gonna make it look like he paid him, just
7 rob him and clear his debt.

8 Q And what was your role in this robbery going to be?

9 A I was the driver.

10 Q Who was going to steal the money?

11 A One of my Blood friends.

12 Q How did this Blood friend of yours get involved?

13 A I reached out to one of my Blood homey and my Blood
14 friend, and he -- he led me to him, to another Blood dude.

15 Q On the day that this robbery happened, where were you?

16 A I was down the block.

17 Q And were you on foot or were you in a vehicle?

18 A I was in a car.

19 Q Could you see anything?

20 A No.

21 Q Did you hear anything when the robbery occurred?

22 A I don't remember.

23 Q I want to direct your attention to the following month
24 now, August of 2019.

25 Were you arrested again?

D. Yu - direct - Lash

1558

1 A I can't hear you. Could you say it again?

2 Q In August of 2019, were you arrested again?

3 A Yes, ma'am.

4 Q What happened?

5 A One of my boy picked me up in a stolen car.

6 Q And why were you arrested?

7 A He got pulled over, and then we went on a high-speed
8 chase a little bit. I was on parole, he was on parole, yeah,
9 and they took me -- they took me to jail after that.

10 Q When the police pulled you over, were you searched?

11 A Yes, ma'am.

12 Q And what, if anything, did they find?

13 A A baton stick and a bag of ketamine.

14 Q What happened with this case?

15 A I violated parole.

16 Q And did you plead guilty to the new charges?

17 A Yes, ma'am.

18 Q Were you sentenced?

19 A Yes, ma'am.

20 Q What was your sentence?

21 A Like 90 days.

22 Q And when were you released from this prison term?

23 A November 2019.

24 Q After your release in November of 2019, did you commit
25 another robbery?

D. Yu - direct - Lash

1559

1 A Yes, ma'am.

2 Q What happened?

3 A I robbed a drug dealer.

4 Q How did you do it?

5 A I just took it from him.

6 Q And what did you take?

7 A I took 15 pounds.

8 Q Of what?

9 A Of marijuana.

10 Q Did you have a weapon?

11 A No, ma'am.

12 Q And how were you able to take the 15 pounds of marijuana
13 from him?

14 A I told him I'll be back, and I never came back.

15 Q What happened with that marijuana?

16 A You You helped me sell it.

17 Q And how much money did you get for selling the 15 pounds
18 of marijuana?

19 A Almost 30,000.

20 Q And what happened to that money?

21 A We went to Atlantic City, and then You You gambled it.

22 Q Mr. Yu, were you arrested again in October of 2020?

23 A Yes, ma'am.

24 Q What happened?

25 A I took my friend's car and his parents called the cops on

D. Yu - direct - Lash

1560

1 me.

2 Q And why were you arrested?

3 A Because it was reported stolen.

4 Q Did the police become involved?

5 A Yes, ma'am.

6 Q Did they conduct any searches when they found you in the
7 car?

8 A What? On the stolen car?

9 Q Uh-hum.

10 A I went -- I put it in an auto shop, and then they came
11 and got me from the auto shop.

12 Q And what, if anything, did the police find when you were
13 arrested?

14 A Drugs.

15 Q What drugs?

16 A They found ketamine, methamphetamine, and marijuana.

17 Q Did you also have a weapon at the time?

18 A Yes, I did.

19 Q What kind?

20 A I had a baton stick and a scalpel.

21 Q What happened in this case?

22 A I got a court appearance ticket.

23 Q Did you serve any jail time?

24 A No, ma'am.

25 Q Mr. Yu, were you arrested again in April of 2021?

D. Yu - direct - Lash

1561

1 A Yes, ma'am.

2 Q What were you arrested for?

3 A Distribution of methamphetamine.

4 Q What happened?

5 A I sold to an undercover.

6 Q You sold what to an undercover?

7 A Methamphetamine.

8 Q And how much methamphetamine did you sell?

9 A A hundred grams.

10 Q How much were you supposed to be paid for selling a
11 hundred grams of methamphetamine?

12 A 1800.

13 Q Were you also using methamphetamine at the time?

14 A Yes, ma'am.

15 Q How long had you been using methamphetamine?

16 A Like, almost a year.

17 Q Since your arrest in April of 2021, where have you been
18 living?

19 A In jail.

20 Q Since you've been in jail, have you ever violated the
21 rules of the facility where you have been incarcerated?

22 A Yes, ma'am.

23 Q What did you do?

24 A I got into a fight. I smoked K2. And then I used a cell
25 phone.

D. Yu - direct - Lash

1562

1 Q What's K2?

2 A It's just synthetic marijuana.

3 Q At some point after your arrest in April of 2021, did you
4 decide to cooperate with law enforcement?

5 A Yes, ma'am.

6 Q In connection with your efforts to cooperate with the
7 Government, did you meet with law enforcement agents and
8 prosecutors?

9 A Yes, ma'am.

10 Q Did you agree to provide them information in these
11 meetings?

12 A Yes, ma'am.

13 Q What kind of information did you agree to provide them?

14 A Information about my case and all my crime history.

15 Q You said information about your case.

16 A Yeah.

17 Q What do you mean by that?

18 A Whatever you guys asked me, about the murder, all my --
19 all my criminal history.

20 Q And that criminal history that you referenced, did that
21 include crimes that you have never have been charged with?

22 A Yes, ma'am.

23 Q That the police didn't know about?

24 A Yes, ma'am.

25 Q Since April of 2021, can you estimate how many meetings

D. Yu - direct - Lash

1563

1 you've had with members of the Government?

2 A A lot.

3 Q How many is a lot?

4 A Twenty, I'd say.

5 Q Mr. Yu, did you eventually enter a guilty plea in federal
6 court?

7 A Yes, ma'am.

8 Q When did you plead guilty?

9 A I think March, right, March.

10 Q Of what year?

11 A '22.

12 Q And what crimes did you plead guilty to?

13 A Distribution of methamphetamine, possession of
14 methamphetamine, and conspiracy to murder for hire.

15 Q Have you been sentenced yet, Mr. Yu?

16 A No, ma'am.

17 Q What is your understanding of the maximum sentence that
18 you face as a result of that guilty plea?

19 A Life.

20 Q Did you plead guilty pursuant to what's called a
21 cooperation agreement?

22 A Yes, ma'am.

23 Q Mr. Yu, I'm going to direct your attention to the screen
24 in front of you, and I'll show you what's been marked for
25 identification as Government's Exhibit 3000.

D. Yu - direct - Lash

1564

1 MS. LASH: And, Ms. Reed, if you could scroll
2 through the 12 pages of this agreement, please.

3 BY MS. LASH:

4 Q Mr. Yu, what is the document on the screen in front of
5 you?

6 A It's my plea agreement -- it's my cooperation agreement.

7 Q Does this 12-page cooperation agreement contain all of
8 the terms and conditions of your agreement with the
9 Government?

10 A Yes, ma'am.

11 Q Is there anything that has been left out of this
12 agreement?

13 A No, ma'am.

14 MS. LASH: Your Honor, the Government offers
15 Government Exhibit 3000.

16 THE COURT: It will be received.

17 (Government's Exhibit 3000 received in evidence.)

18 MS. LASH: Ms. Campbell, if we could publish this to
19 the jury.

20 (Exhibit published.)

21 Q Mr. Yu, I'm showing the jury what is the last page of
22 your cooperation agreement.

23 Do you see your signature on that page?

24 A Yes, ma'am.

25 Q And where is it?

D. Yu - direct - Lash

1565

1 A Where it says David Yu.

2 Q Mr. Yu, what is your understanding of what you have to do
3 under the terms of this cooperation agreement?

4 A I must tell the truth.

5 Q What else?

6 A I must tell you about all my crimes that I did and if you
7 guys need me to come testify, I must come testify.

8 Q And how about future crimes, what are you allowed to do
9 about that?

10 A I must not commit no more crimes.

11 Q If you do everything that you are supposed to under this
12 cooperation agreement, what is your understanding of what the
13 Government is supposed to do for you?

14 A If I -- if I tell the truth and follow all the rules?

15 Q Yes.

16 A I could get a 5K1 letter.

17 Q What's your understanding of what a 5K1 letter is?

18 A It's, basically, a recommendation letter to the judge
19 letting him know my cooperation, what I helped out with the
20 case, my admit -- what I admit to my crimes, my history of
21 crimes; yeah.

22 Q You said that the 5K1 letter was a recommendation letter,
23 but does the letter include a sentence recommendation?

24 A No, ma'am.

25 Q And what is your understanding of what the 5K1 letter

D. Yu - direct - Lash

1566

1 allows the sentencing judge to do?

2 A To go under my mandatory minimum.

3 Q And as you sit here today, has the Government promised
4 that it will write this 5K1 letter for you?

5 A No, ma'am.

6 Q And even if the Government does write this 5K1 letter,
7 what is the maximum sentence that you could still face?

8 A Life.

9 Q Mr. Yu, what sentence are you hoping for?

10 A Time served.

11 Q How long have you been in jail so far?

12 A Almost three years.

13 Q Has anybody promised you that you are going to get a
14 reduced sentence?

15 A No, ma'am.

16 Q Has anybody promised that you are going to get a sentence
17 of time served?

18 A No, ma'am.

19 Q Who is responsible for determining what sentence you get?

20 A The judge.

21 Q And as far as you understand it, does the result of this
22 trial, what happens here, impact whether or not you get a 5K1
23 letter?

24 A What you mean by that?

25 Q I mean, in other words, does it matter whether the

D. Yu - direct - Lash

1567

1 defendants in this courtroom are found guilty or innocent --

2 A No.

3 Q Let me finish.

4 -- as to whether you get a 5K1 letter?

5 A No, ma'am.

6 Q Does whether you tell the truth in your testimony impact
7 whether you get a 5K1 letter?

8 A Yes, ma'am.

9 Q What is your understanding of what happens here if you
10 lie today?

11 A You guys can rip my 5K1. I mean the 5K1 opportunity goes
12 out the window.

13 Q At that point would you get to take your guilty plea
14 back?

15 A No, ma'am.

16 Q What would your sentence be if you lied during your
17 testimony today?

18 A Life.

19 Q Mr. Yu, I'd like to turn back to November of 2018, after
20 you've been released from prison.

21 A Right.

22 Q Where did you live at the time?

23 A In the Bronx.

24 Q Remind us, what was your relationship like with You You
25 at this time?

D. Yu - direct - Lash

1568

1 A He's my best friend.

2 Q Did you receive a phone call from You You after your
3 release from prison?

4 A Yes, ma'am.

5 Q Why?

6 A He told me that his uncle got a job for me.

7 Q Did You You provide any other details about the job?

8 A No, not yet.

9 Q Did You You say anything else concerning his uncle?

10 A No.

11 Q At this time, had you ever met You You's uncle?

12 A Yes, ma'am.

13 Q When did you first meet him?

14 A When I came home from jail the first time.

15 Q And approximately what year was that?

16 A Like 2011, '12, around that time.

17 Q And where did you meet You You's uncle at that time?

18 A At his company, at his office.

19 Q And what company did he run?

20 A A construction company.

21 Q Have you seen him since you first met him in 2011 or
22 2012?

23 A What do you mean?

24 Q Had you ever seen You You's uncle since the first time
25 you met him in 2011 or 2012?

D. Yu - direct - Lash

1569

1 A Like -- like, did I meet him after that?

2 Q Yes. Did you see him after that?

3 A Like -- like here and there, when I'm with You You
4 though.

5 Q Can you estimate how many times you saw him after you
6 first met him in '11 or '12?

7 A It was a few times.

8 Q At this time, did you know You You's uncle's name?

9 A No, I didn't.

10 Q How did you refer to him?

11 A Uncle.

12

13 (Continued on next page.)

14

15

16

17

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25

D. Yu - direct - Lash

1570

1 BY MS. LASH: (Continuing.)

2 Q And you said that you met him at his construction
3 company; is that right?

4 A Yes, ma'am.

5 Q Did you ever work for You You's uncle?

6 A No, ma'am.

7 Q In November of 2018 when You You called you about a job
8 for his uncle, what did you think the job was going to be?

9 A I thought I was going to beat somebody up, you know what
10 I mean? I thought somebody owed him money. I thought I was
11 just going to beat somebody up for him.

12 Q And why did you think they would call you for that task?

13 MR. KOUSOUROS: Objection.

14 THE COURT: I'll sustain the objection to the form
15 of the question.

16 MS. LASH: We'll move on.

17 Q Did you agree to meet with You You and his uncle about
18 the job?

19 A Yes, ma'am.

20 Q And approximately how long after You You called you did
21 this meeting take place?

22 A I can't -- I can't recall.

23 Q Where did you meet You You and his uncle?

24 A At a restaurant.

25 Q Do you know the name of the restaurant?

D. Yu - direct - Lash

1571

1 A No, no, ma'am.

2 Q Can you describe it for us?

3 A It's, like, a noddle shop I think it was.

4 Q Where was it located?

5 A In Flushing.

6 Q What streets?

7 A Cedar and Holly, around there.

8 Q Were there any notable landmarks in the area?

9 A There was a big supermarket across the street.

10 Q Mr. Yu, on your screen only, I'm showing you what's been
11 marked for identification as Government Exhibit 520. Do you
12 recognize this?

13 A Oh, yes, ma'am.

14 Q What is it?

15 A That's the -- that's the restaurant we went to.

16 Q Okay. And there's a few businesses in this picture. Can
17 you tell us specifically which one?

18 A I think it was the Taste Good place.

19 Q Taste Good place?

20 A Yeah, Taste Good.

21 Q Is this a fair and accurate depiction of how the
22 restaurant looked in 2018?

23 A Yes, ma'am.

24 MS. LASH: Your Honor, the government offers
25 Government Exhibit 520 into evidence.

D. Yu - direct - Lash

1572

1 THE COURT: 520 will be received, but perhaps you
2 need him to point out exactly which of the buildings is the
3 restaurant.

4 (Government Exhibit 520 was received in evidence.)

5 MS. LASH: Yes, Your Honor.

6 Q Now that the photograph of the restaurant is on the
7 screen, can you tell us what the name of the restaurant was?

8 A I think it was the Taste Good place, yeah.

9 Q And is the Taste Good place the second red awning in from
10 the left side of the picture?

11 A Yes.

12 Q What time did the meeting with You You and his uncle take
13 place?

14 A In the afternoon.

15 Q And how did you get to the restaurant?

16 A You You drove me.

17 Q Which car did you take?

18 A His pick-up truck.

19 Q When you arrived, where was You You's uncle?

20 A He was already inside the restaurant.

21 Q And what did you do when you got there?

22 A I ordered a soda.

23 Q And did you sit down?

24 A Yes, ma'am.

25 Q Who was sitting with you?

D. Yu - direct - Lash

1573

1 A Me, You You, and the uncle.

2 Q Did anybody else order anything?

3 A Yeah, they order something, I don't remember what it was,
4 though.

5 Q How long were you inside the restaurant with You You and
6 his uncle?

7 A Like, 20, 30 minutes.

8 Q And what happened during this 20, 30-minute period?

9 A They started talking in Chinese.

10 Q What were they talking about?

11 A I don't know. I couldn't -- I don't understand Chinese
12 so, I mean, I can't say.

13 Q What were you doing while they were talking?

14 A I was just being respectful and sitting down.

15 Q After 20 or 30 minutes had passed, what happened next?

16 A We got up, we left, and I smoked a cigarette with the
17 uncle right outside the restaurant.

18 Q And using Government's Exhibit 520, can you tell me
19 where, approximately, you smoked a cigarette with You You's
20 uncle?

21 A Like, right here, right by where the -- right by where
22 the -- where the folding sign is at.

23 Q Where the placard is above the Google stand in the middle
24 of the page?

25 A Yeah, around there, yeah.

D. Yu - direct - Lash

1574

1 Q Did you have any conversation with You You's uncle while
2 you were smoking a cigarette?

3 A No.

4 Q Did he interact with you at all?

5 A I remember him patting my -- like he tapped, he patted my
6 shoulder.

7 Q Did he say anything?

8 A No. Well, I don't remember actually. I'm sorry.

9 Q Who left the restaurant first?

10 A We left at the same time.

11 Q And where did you go?

12 A Me and You You went to You You's car and the uncle went
13 the other way.

14 Q When you were inside You You's car, what happened?

15 A That's when You You, he broke it down to me what I had to
16 do.

17 Q What did he say?

18 A He told me -- that he wants -- the uncle wants me to ap
19 somebody for him.

20 Q What does it mean to clap someone?

21 A To shoot somebody.

22 Q What?

23 THE COURT: What?

24 THE WITNESS: To shoot somebody.

25 Q Did You You use the word clap?

D. Yu - direct - Lash

1575

1 A Yeah, think so -- from -- my understanding, yeah.

2 Q And what else did You You tell you about what he wanted
3 you to do?

4 A That's it. That was it basically.

5 Q Did he tell you who his uncle wanted you to kill?

6 A Yeah, he told me what the problem was. He basically said
7 that somebody, like, his partner left the company and just
8 took all -- start his own company and, like -- and took all
9 the clients from him.

10 Q Did he tell you the name of this person?

11 A No.

12 Q Did you ask?

13 A I don't remember, ma'am.

14 Q Did You You tell you what, if anything, you would receive
15 if you agreed to shoot this person?

16 A He told me the uncle would take good care of me.

17 Q And what did you understand that to mean?

18 A That he was going to pay me a large sum of money.

19 Q Was a specific amount of money --

20 MR. KOUSOUROS: Objection, objection.

21 THE COURT: Overruled.

22 Q Mr. Why you, was a specific amount of money ever
23 discussed?

24 A No, ma'am.

25 Q Did you agree to kill this person?

D. Yu - direct - Lash

1576

1 A Yes, ma'am.

2 Q Did you discuss this job for You You's uncle again?

3 A Excuse me?

4 Q Did you discuss this job with You You, for his uncle,
5 again?

6 A What does that mean?

7 Q Did you have another conversation with You You about this
8 job?

9 A Oh, yes, ma'am.

10 Q And when did that happen?

11 A A couple weeks later.

12 Q What happened?

13 A He said that he has another -- we have another meeting
14 with the uncle.

15 Q And why were you meeting with his uncle?

16 A To discuss about the job.

17 Q Did you know where the meeting was supposed to take
18 place?

19 A Yes, ma'am.

20 Q Where?

21 A Same restaurant.

22 Q What happened on the day of the meeting?

23 A I didn't go.

24 Q Why not?

25 A At that time, like, my -- like, I wasn't -- I wasn't

D. Yu - direct - Lash

1577

1 really ready to do that job for him, I just didn't know how to
2 tell him yet.

3 Q And why didn't you tell You You?

4 A I didn't want to disappoint him.

5 THE COURT: At this point in time, I think we'll
6 take a brief afternoon recess.

7 MS. LASH: Yes, Your Honor.

8 THE COURT: Okay. We'll be going until 5:30 today,
9 that's why I wanted to make sure you have an afternoon recess.

10 (Brief recess.)

11 MR. MAZUREK: Can I raise one issue first?

12 THE COURT: With the witness here?

13 MR. MAZUREK: Oh, no.

14 THE COURT: We'll take the witness out.

15 (The witness steps down.)

16 THE COURT: Yes, Mr. Mazurek?

17 MR. MAZUREK: Your Honor, I expect that on direct
18 examination that --

19 THE COURT: Everyone can be seated.

20 MR. MAZUREK: -- that the government may seek to
21 elicit a conversation that this witness allegedly had with
22 You You about what You You understood that my client,
23 Mr. Zhang, was promised to receive from Allen Yu, the business
24 interest. My concern is that the timing of that information
25 may be hearsay as opposed to a co-conspirator statement

D. Yu - direct - Lash

1578

1 because it was something that was learned after-the-fact and,
2 so, I wanted to alert the Court of that, that I would be
3 objecting to hearsay depending on how, you know, it is
4 elicited, but that is my understanding based on the witness
5 statements.

6 MS. LASH: Your Honor, so, what Mr. Mazurek is
7 referencing is You You, and I expect David Yu will testify
8 that they had a conversation where You You told him that Zhang
9 was going to receive a percentage of the uncle's construction
10 company if he carried out the murder. Mr. Yu does not recall
11 exactly when this conversation took place. He believes it was
12 before the murder, but I expect he'll testify he can't be sure
13 as to the date. Regardless of when the conversation happened,
14 it was close in time to the murder and it is a co-conspirator
15 statement.

16 As the government moved in limine, the conspiracy
17 here did not end with the death of the victim. The object of
18 this conspiracy for the defendants was to receive payment and
19 that did not occur until December of 2019. So Mr. Yu will
20 certainly testify that this conversation happened close in
21 time to the murder, it's a co-conspirator statement, and we
22 would be offering it on that basis.

23 MR. MAZUREK: Your Honor, I mean, if he can't
24 remember, that is actually very relevant because the payment
25 itself is not -- as the government has said --

D. Yu - direct - Lash

1579

1 THE COURT: It's murder for hire, they have to
2 receive money, correct? That's one of the elements?

3 MR. MAZUREK: Yes, but it's the promise or the
4 agreement, the bargained for exchange.

5 THE COURT: But isn't it entirely relevant and
6 wouldn't be pursuant to the conspiracy how they actually
7 received that money later on?

8 MR. MAZUREK: But, I mean, there was no -- there is
9 no payment in this instance. There's no business interest
10 that had changed hands. The government's -- I mean, the
11 government's theory in remunerations seems to be a shifting
12 sand in this case. They opened on the issue that it was a
13 \$30,000 payment to my client in cash, however, You You's
14 testified that it was a percentage of the business -- of
15 Allen Yu's business.

16 I'm not sure where all of that lands at this stage
17 but all I know is that if David Yu learned from You You
18 after-the-fact that there was some business interest that had
19 been promised sometime before, that's just hearsay, it's just
20 puffing, it doesn't further the conspiracy in any way and
21 therefore is just blatant hearsay. That's my concern, that
22 this witness shouldn't be able to say well, You You told me
23 after-the-fact that there was this supposed promise. That is
24 not in furtherance of any of the aims of the co-conspirator,
25 but it's just rumor and gossip among two criminal associates

D. Yu - direct - Lash

1580

1 and should be precluded.

2 MR. KOUSOUROS: Judge, I would add that the
3 indictment in this case has the temporal limits of the
4 conspiracy from August of 2018 until February of 2019. We
5 understand the on or about, but the on or about doesn't
6 necessarily go months and months and months beyond that. That
7 is what was charged in the indictment.

8 MS. LASH: The dates of the indictment, Your Honor,
9 courts have held that that doesn't matter in determining
10 co-conspirator statements for the duration of the conspiracy.

11 As you've pointed out, whether or not payment was
12 received, regardless of what was promised, is circumstantial
13 evidence of an element that the government has to prove; here,
14 the promise of payment. The fact that payment was exchanged
15 illustrates the intent of these individuals in carrying out
16 this murder. And, secondly, these statements were during and
17 in furtherance of the conspiracy. You have coconspirators
18 discussing the aims of the conspiracy and I expect David Yu,
19 if asked, would testify that this information was relevant to
20 him in deciding whether or not to carry this out or if it was
21 after the conspiracy, how much he would receive for his
22 participation.

23 THE COURT: Well, I'm inclined, without hearing what
24 he's going to say, to permit it as being a statement in
25 furtherance of the conspiracy. I don't think this -- even if

D. Yu - direct - Lash

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1 it is after the murder, I don't think that the conspiracy
2 necessarily ends at murder. These are co-conspirators talking
3 to each other, reassuring each other, so I think it comes in.

4 Now you've got five minutes.

5 (Jury exits the courtroom.)

6 (Brief recess.)

7 (Witness resumes the witness stand.)

8 (Jury enters the courtroom.)

9 THE COURT: All right. Please be seated. We're
10 ready to begin.

11 MS. LASH: Thank you, Your Honor.

12 BY MS. LASH:

13 Q Mr. Yu, before the break, we were talking about a second
14 meeting that was planned with You You and his uncle; do you
15 remember that?

16 A Yes, ma'am.

17 Q And what happened on the day of the meeting?

18 A I didn't show up.

19 Q And what happened when you didn't show up?

20 A You You got mad at me.

21 Q And what did he do?

22 A Cursed at me.

23 Q How did he contact you?

24 A He text me.

25 Q Mr. Yu, I'd like to show you on the screen what's been
marked for identification as DX-23.

D. Yu - direct - Lash

1582

1 MS. LASH: And, Ms. Reed, if we could scroll through
2 the first couple of pages so Mr. Yu can familiarize himself
3 with this.

4 Q Mr. Yu, do you recognize these messages?

5 A Yes, ma'am.

6 Q And whose messages are in blue on the left side?

7 A That's me. The blue one is me.

8 Q And whose messages are in green on the left side?

9 A That's You You.

10 MS. LASH: And, Your Honor, I see this is displayed
11 for the jury. I believe a portion of DX-23 was moved into
12 evidence by Mr. Kousouros on a previous cross-examination. To
13 the extent that the full exhibit was not moved in, the
14 Government moves in DX-23.

15 THE COURT: Is DX is a defense exhibit?

16 MS. LASH: It is, Your Honor.

17 THE COURT: All right. Then it will be received.

18 (Defendants' Exhibit DX-23 was received in
19 evidence.)

20 Q Mr. Yu, looking at the first message in blue on the
21 screen, what's the date and time?

22 A February 6, 2019.

23 Q I'm sorry, I interrupted you. What time was the message
24 sent?

25 A 12:20 a.m.

D. Yu - direct - Lash

1583

1 Q And now that the jurors can see the messages, remind us
2 who is blue and who is green.

3 A Blue is me and green is You You.

4 Q I would like to read some of these messages with you.
5 I'll read You You's messages and I'll have you read your own
6 messages. We're going to go through the first three pages.
7 So, please, you being.

8 A "All right. That strange."

9 Q "Bullshit, we've been tapped. We need to speak ASAP,
10 it's coming up, the day."

11 A "Yeah, I know."

12 Q And Mr. Yu, at the top of the page?

13 A Oh. "You said Monday."

14 Q "You need to see me ASAP. Stop fucking around. End up
15 messing shit -- end up messing shit up and do life."

16 I'm going to stop there, Mr. Yu. The messages on
17 page two that said, "it's coming up, the day," and you
18 replied, "you said Monday." What did you understand the
19 message "it's coming up the day" to mean?

20 A It was the day that we were supposed to do the shooting.

21 Q Okay. I'd like to continue with these messages. We'll
22 start on page four with the first message is You You's
23 message.

24 "I'm dead serious."

25 A "Okay I got you. I got my program tomorrow in the

D. Yu - direct - Lash

1584

1 morning. After that, I could go and I could burn one with
2 you."

3 Q "Yo my G, keep your word. Stop messing around."

4 A "I'm good. I put \$10 in the Metro so I got no excuse."

5 Q And I'll stop you there on page five. What did you mean
6 by, "I put ten dollars in the Metro, I got no excuse?"

7 A I put \$10 on the Metro card.

8 Q What did you understand that you were supposed to do with
9 that Metro card?

10 A I was supposed to come to Flushing, Queens and meet up
11 with You You.

12 Q I'll continue at the bottom of page five with Yu Yu's
13 message.

14 "Where are you?"

15 A "Waiting for my counselor. My shit about to start."

16 Q "Let me know when you finish."

17 A "Ight. My class about to end in ten minutes."

18 Q "Yo, I'm waiting on you."

19 A "Ight. I'm gonna hop on the train and Imma go straight
20 to you".

21 Q "Bet."

22 A "I'm hopping on the train right now."

23 Q "Yeah, I'm home for now."

24 A "Yo, you really called my brother?"

25 Q "Yo, it's too late. I don't need to meet you. I told

D. Yu - direct - Lash

1585

1 you I have to see you in working hours. Pointless you coming
2 meet me at nighttime. I got my shit to handle at night,
3 that's why I tell you to come meet me daytime. You just keep
4 playing that time game with me."

5 And we'll stop there on page 11, Mr. Yu. Why did
6 You You want to meet you in the daytime?

7 A Because he wanted -- he wanted to talk about -- he wanted
8 to plan out about the job.

9 MR. KOUSOUROS: Objection, objection to what
10 somebody else wanted.

11 MS. LASH: I can rephrase, Your Honor.

12 Q Mr. Yu, why did you understand that You You wanted to
13 meet you in the daytime?

14 MR. KOUSOUROS: Same objection, Judge.

15 THE COURT: Overruled.

16 Q You can answer the question.

17 A All right. He wanted to talk about the -- about the job,
18 like he wanted to have a -- he wanted to have a perfect plan.

19 Q And why did he want that conversation to occur in the
20 daytime?

21 MR. KOUSOUROS: Objection, Judge. Objection.

22 THE COURT: Did you have an understanding, based on
23 your previous dealings with You You, as to what he meant by
24 this?

25 THE WITNESS: What do you mean, ma'am?

D. Yu - direct - Lash

1586

1 THE COURT: Well, you had to been talking to You You
2 for some time about this issue, right, about the killing or
3 you talked to him before about the killing?

4 THE WITNESS: Yes, ma'am.

5 THE COURT: And how well did you know him, You You?

6 THE WITNESS: That was my best friend.

7 THE COURT: Well, when he said this thing about the
8 daytime, did that mean something specific to you?

9 THE WITNESS: No, he just wanted me to come earlier
10 and talk about it because I've been -- I've been dodging him,
11 yeah.

12 THE COURT: Okay.

13 Q Mr. Yu, I'm going to direct your attention to the top
14 message on page 11 where You You tells you "I've got my shit
15 to handle at night." Did you have an understanding of what he
16 meant by that?

17 A Yeah, that's when -- because he be selling weed, so,
18 like, I guess he was trying to -- he was trying to do his
19 little hustle at nighttime and -- and talk about the job thing
20 in the daytime.

21 Q Okay. I'm going to resume on page 11 with the message in
22 the middle.

23 "Everyday you got shit to do and reasons why you
24 can't make it and you more busy than me."

25 A "It wasn't even that serious, b, she just wanted me to

D. Yu - direct - Lash

1587

1 help her with the Medicaid -- with the Medicaid."

2 Q And what did you mean when you wrote, "wanted me to help
3 her with her Medicaid?"

4 A What's it called. I was helping -- with her Medicaid, I
5 was helping my mom renew her Medicaid card at that time, on
6 that day, yeah.

7 Q And, Mr. Yu, if you can continue on page 12 with the top
8 message.

9 A "After that, I was gonna leave, bro."

10 Q "I see. You don't take this thing serious."

11 A "I don't. My -- I'm the one who's gonna clip him."

12 Q And I'll stop you there, Mr. Yu. What did you mean when
13 you wrote, "I'm the one who's gonna clap him?"

14 A I -- I meant to tell him that I was to -- I -- I'm the
15 one that's going to be shooting him.

16 Q And why did you say that?

17 A Because at that time, I still didn't tell him that I
18 didn't want to do the job.

19 Q And you told us earlier that you didn't want to be the
20 shooter, right?

21 A Yeah.

22 Q So why would you write that?

23 A At that time, he -- he still believed that I was going to
24 go through with this job, that's why, like, I was dodging him
25 a lot.

D. Yu - direct - Lash

1588

1 Q And what was your plan at this point?

2 A I was going to find one of my Blood homies, like, to do
3 it for me.

4 Q And how did you go about doing that?

5 A I -- I didn't do it. I couldn't come up with -- I
6 couldn't find anyone to do it.

7 Q Did you contact anyone at all?

8 A No, I couldn't think of anyone who was -- that's a big
9 job that you're asking somebody to do, you know what I mean?
10 And if what if I asked him -- let's say I asked one of my
11 Blood -- my Blood friends, yo, what's up, you want to murder
12 somebody for me, I couldn't even offer him any money yet, I
13 didn't know how much I was going to get paid for it, I
14 couldn't give him a number for it. And what if he said no,
15 you know what I mean, he would have been a liability. So I
16 couldn't just -- I didn't just come up -- I didn't go ask
17 anybody.

18 Q At the time you wrote that message, "I'm the one who's
19 gonna clap him," were you intending on shooting the victim?

20 A No, ma'am.

21 Q I'm going to continue reading these messages at the
22 bottom of page 13 with You You's message.

23 "Imma put it like this. Someone have a job
24 interview, tells you to come in at 10:00 a.m. You just
25 decide, oh, let me do my shit and go interview at 10:00 p.m.

D. Yu - direct - Lash

1589

1 So, yeah, I don't know how that works. I don't run on your
2 time, N. So you do you, my G. Imma handle with other
3 people."

4 A "It's not even that. It's only 5:30."

5 Q "It's, like, the fifth time you did this. You tell me
6 you see me during the daytime, then six p.m, no call, no text
7 so I call, then you've got a million things to do now. I
8 mean, shit, you busy guy. Ight, then guess you don't need to
9 see me."

10 A "What you talking about, bro?"

11 Q "All right. Whatever, bro. You bring nothing but
12 stress, bro. I was having a good day. I realize these days
13 you have nothing but bad energy around you. Can't chill with
14 you and can't make money with you."

15 A "No, bro, it's just you make me feel like I'm worth
16 nothing. Like when you yell at me, I take everything to the
17 heart. Damn, bro, my mom is bugging out right now."

18 Q "Yo, mister, the job is taken care of. Don't worry about
19 it. My bad about my part. Next time, hopefully I can see you
20 again."

21 And we'll stop there, Mr. Yu. Did you see You You
22 after you exchanged these messages?

23 A Yes, ma'am.

24 Q Where did you see him?

25 A I met him at his house.

D. Yu - direct - Lash

1590

1 Q In which room of his house were you in?

2 A I was in the living room.

3 Q Did you learn in that meeting what You You meant when he
4 wrote to you the job is taken care of?

5 A Yes.

6 Q And what did you learn?

7 A That he didn't need me no -- that he found another
8 shooter basically. He said he found -- that he found Zhe and
9 Zhe found the shooter for him that was really good at what he
10 do.

11 Q You said You You told you that Zhe was going to do it; is
12 that right?

13 A No, that he found -- that he -- that he hollered at Zhe
14 and Zhe said he was going to do it and Zhe found somebody else
15 that was going to be the shooter.

16 Q Who is Zhe?

17 A He was my friend.

18 Q What's his full name?

19 A Zhe Zheng.

20 Q When did you meet him?

21 A Who, Zhe?

22 Q Yes.

23 A Like 2005, 2006.

24 Q And in 2018, 2019, what was your relationship like with
25 Zhe?

D. Yu - direct - Lash

1591

1 A 2018 you said?

2 Q Yes.

3 A I had no problems with him.

4 Q Were you friends?

5 A Yeah, we're cool.

6 Q What was the last time you had seen Zhe before You You
7 mentioned his name at this meeting?

8 A I don't know, but, like, I see him here and there, like
9 at karaoke bars or I see him around.

10 Q Did you have his contact information?

11 A Yes.

12 Q And what contact information did you have?

13 A I had his WeChat.

14 Q And what's WeChat?

15 A It's like a Chinese WhatsApp.

16 Q And what was -- what contact information did you have for
17 Zhe on WeChat?

18 A New York Zhe.

19 Q And what was New York Zhe?

20 A That was his ID.

21 Q So You You told you Zhe was going to do it?

22 A Yeah.

23 Q What did you understand that to mean?

24 A That -- that Zhe was going to be part of the -- part of
25 the job.

D. Yu - direct - Lash

1592

1 Q And you said that Zhe found someone else to be the
2 shooter?

3 A Yeah.

4 Q What additional information did You You provide about
5 that?

6 A That's it, that the shooter is really good at what he do.

7 Q What else did You You say about the job?

8 A What I said basically.

9 Q Did You You say what he wanted your role to be?

10 A Yes, I asked him, like, you don't need me no more, I'm
11 good, right? He told me that he still wants me to be involved
12 and just ride out with him and if I do, then he say he's going
13 to buy my mom a house.

14 Q Did you agree to ride with You You?

15 A Yeah.

16 Q Why? Why did you agree to do that?

17 A Because that was my boy and he said he was gonna buy my
18 mom a house.

19 Q You told us earlier that you didn't want to pull the
20 trigger?

21 A Yeah.

22 Q Why agree to be there that night at all?

23 A It's a big difference, like, you know what I mean, from
24 running up on somebody and just pulling the trigger and just
25 looking at for somebody just being a look-out. I felt like it

D. Yu - direct - Lash

1593

1 was a big difference.

2 Q Did You You later tell you what Zhe wanted if he
3 participated in the murder?

4 A Yeah.

5 Q When did that happen?

6 A I -- I can't -- I can't answer that directly but it was
7 later on, he told me that Zhe don't even want the money.

8 MR. MAZUREK: Objection.

9 Q Before you tell me what he said, you said it was later
10 on. Where were you?

11 A I was at his house.

12 Q What were you doing at his house when he told you this?

13 MR. MAZUREK: May I ask who "he" is, I'm getting
14 lost.

15 Q Mr. Yu, you can look at me. We were talking about what
16 You You told you that Zhe would get if he participated in the
17 murder. You said you were at his house?

18 A Yeah.

19 Q What were you doing at his house?

20 A At Yu Yu's house. I was stocking up weed cartridges.

21 Q And what was the weather like outside?

22 A It was cold I remember because I told him to put the heat
23 up on me.

24 Q Was that before or after the murder?

25 A I don't -- I can't answer that. I don't really remember.

D. Yu - direct - Lash

1594

1 Q Was it close in time to when the murder happened?

2 MR. MAZUREK: Objection.

3 THE COURT: Overruled.

4 A I don't know, ma'am.

5 Q Was it in the same season that the murder happened?

6 A Yeah, it was during the wintertime.

7 Q What did You You tell you that Zhe wanted if he
8 participated in the murder?

9 MR. MAZUREK: Objection, hearsay and as to form.

10 THE COURT: Well, I think your question is what, if
11 anything, did he tell him.

12 MS. LASH: Yes, Your Honor. I'll rephrase.

13 Q Mr. Yu, what, if anything, did You You tell you that Zhe
14 wanted if he participated in the murder?

15 A He wanted a percentage of the uncle's company.

16 Q Did You You tell you why Zhe wanted a percentage of the
17 uncle's company?

18 A No, no, ma'am.

19 Q Before the murder happened, did you learn the name of the
20 person that you had agreed to kill?

21 A No, ma'am.

22 Q Did you learn what this person looked like?

23 A No, ma'am.

24 Q Mr. Yu, I would like to talk about the murder now. How
25 did you know when the murder would take place?

D. Yu - direct - Lash

1595

1 A You You told me.

2 Q What did he tell you?

3 A To be ready for that day.

4 THE COURT: I'm sorry, who is telling you this?

5 THE WITNESS: You You.

6 THE COURT: All right.

7 Q What did You You tell you, Mr. Yu?

8 A Just be on point, he told me to get a burner phone and
9 that we were going to rent out a van.

10 Q What's a burner phone?

11 A Prepaid phone.

12 Q And why would a person purchase a burner phone?

13 A It's not under your name so I guess whatever you do with
14 it, it continue come back -- trace back to you.

15 Q You said You You told you to purchase a burner phone; did
16 you do that?

17 A No.

18 Q Why not?

19 A I didn't have the funds for it.

20 Q Did anyone else purchase a burner phone?

21 A Yeah, You You did.

22 Q And were you with You You when he purchased the phone?

23 A No.

24 Q After You You purchased the phone, what did he do?

25 A He gave me the number to it and he told me to call --

D. Yu - direct - Lash

1596

1 like, to talk only on this phone about the job.

2 MS. LASH: Ms. Reed, if we could put up side-by-side
3 what's been marked for identification as
4 Government Exhibit 903 and 925, please.

5 Q Mr. Yu, on your screen, can you see what's been marked
6 for identification as Government Exhibit 903?

7 A Yeah.

8 Q What is this a picture of?

9 A The 903 -- the 903 one?

10 Q The 903 one.

11 A That's -- that's a picture of my phone.

12 Q Okay. And whose contact is displayed on your phone?

13 A That's You You's -- that's You You's contact.

14 Q Okay. Is that a fair and accurate depiction of your
15 phone?

16 A Yes, ma'am.

17 Q 925, what is this a picture of?

18 A It's my phone.

19 Q Okay. And what's displayed on your phone?

20 A You You's contact.

21 Q Okay.

22 MS. LASH: Your Honor, the government offers
23 Government Exhibit 903 and 925 into evidence.

24 THE COURT: So these are two contacts you had for
25 You You in your phone?

D. Yu - direct - Lash

1597

1 THE WITNESS: Yes, ma'am.

2 THE COURT: Different contacts, right?

3 THE WITNESS: Yes, ma'am.

4 THE COURT: Was one of them the burner phone?

5 THE WITNESS: Yes, ma'am.

6 THE COURT: Which one?

7 THE WITNESS: The one that says Mis, M-I-S.

8 THE COURT: Okay.

9 They will be received.

10 (Government Exhibits 903 and 925 were received in
11 evidence.)

12 MS. LASH: If we can display these to the jury,
13 Ms. Reed.

14 Q Starting with Government's Exhibit 903, what contact is
15 this?

16 A I can't hear you, ma'am.

17 Q Starting with Government Exhibit 903, whose contact is
18 this?

19 A That's You You's.

20 Q Okay. What's the contact name?

21 A Mis.

22 Q Why did you save it as Mis?

23 A Because that's me and his nickname, we call each other
24 mister.

25 (Continued on the following page.)

DAVID YU - DIRECT - MS. LASH

1598

1 DIRECT EXAMINATION (Continued)

2 BY MS. LASH:

3 Q And the Court asked you, but what is this the contact
4 for?

5 A That's the burner number.

6 Q Could you read the phone number for us.

7 A (929)401-9002.

8 Q Now, turning to the left side of the screen in front of
9 you, you have Government Exhibit 925.

10 What is this contact?

11 A That's You You's -- his first phone.

12 Q And what is the contact name for this phone?

13 A Mista.

14 Q And could you read the number for us, please.

15 A (347)553-2163.

16 Q Thank you.

17 MS. LASH: We can take these down, Ms. Reed?

18 Q Mr. Yu, how far in advance of the murder did You You tell
19 you that it was planned to happen?

20 A I don't remember, ma'am.

21 Q Was it in the days before?

22 A I don't really remember.

23 Q On the day of the murder, when do you first hear from You
24 You that day?

25 A The day of the murder?

DAVID YU - DIRECT - MS. LASH

1599

1 Q Yes.

2 A The afternoon.

3 Q And what happens?

4 A He calls me and tells me to get ready.

5 Q And what else does he say?

6 A He tells me that -- not to sniff K.

7 Q I'm sorry, can you repeat that, Mr. Yu.

8 A He told me not to sniff K.

9 Q And what you say, K, what do you mean?

10 A Ketamine.

11 Q I want to turn to that in a minute.

12 What did you do after you got the phone call from

13 You You telling you to get ready?

14 A I got ready and I took the bus to Flushing.

15 Q You said You You told you not to sniff K?

16 A Yeah.

17 Q Why did he say that to you?

18 A Because he knew that I had a habit at that time.

19 Q Did you go anywhere before you met You You?

20 A Yes.

21 Q Where did you go?

22 A I went to go buy a bag of K.

23 Q You said you had a habit at the time; is that right?

24 A Yes, ma'am.

25 Q How much ketamine were you using in a day's time?

DAVID YU - DIRECT - MS. LASH

1600

1 A Like three grams a day.

2 Q And how long had you been using about three grams of
3 ketamine a day?

4 A A little while.

5 Q When you say, a little while, what do you mean?

6 A I just came home, I just got released, so my, like,
7 tolerance was building up at that time.

8 Q And when you say you had just got released, when was the
9 last time you had been released from prison?

10 A November.

11 Q How do you take ketamine?

12 A Snort it.

13 Q And how much ketamine at this time were you using at one
14 time?

15 A Sniffing a half a bag.

16 Q And you told us you were taking about three grams a day.

17 How many grams of ketamine are in a bag of ketamine?

18 A Like a gram.

19 Q A gram, okay.

20 So one bump that you would take would be about a
21 half a bag or half a gram of ketamine; is that right?

22 A Yes, ma'am.

23 Q At that time, how did half a gram of ketamine affect you?

24 A I'll get high.

25 Q Can you explain more?

DAVID YU - DIRECT - MS. LASH

1601

1 A Like, I'll slur my word, I wouldn't be able to, like,
2 walk straight.

3 Q Could you drive a car?

4 A Nah.

5 Q How long did the effects of a half of gram of ketamine
6 last?

7 A Like 30 minutes.

8 Q On this day so far, before you went to purchase this bag
9 of ketamine, had you had any ketamine so far?

10 A No, ma'am.

11 Q Why not?

12 A Because You You told me -- like, he was on to me, like,
13 he was going to make sure if I was high or not. He was going
14 to see if I was high or not.

15 Q After buying the bag of ketamine, did you use any
16 ketamine at that time?

17 A I can't hear you.

18 Q Sorry. After buying that bag of ketamine, did you use
19 any ketamine at that time?

20 A No, not at that time.

21 Q After buying the ketamine, where did you go next?

22 A I went to, like, 162nd and Sanford to meet up with You
23 You.

24 Q And after meeting up with You You, where did you go?

25 A I went to Enterprise.

DAVID YU - DIRECT - MS. LASH

1602

1 Q What do you mean when you say you went to the Enterprise?

2 A Went to go rent out a van.

3 Q Where was the Enterprise located?

4 A On Northern Boulevard.

5 Q And why did you go to Enterprise?

6 A You You wanted to rent out a van.

7 Q Ask why did You You want to rent a van?

8 A He didn't want to use his car. He, you know, like, he
9 didn't want to be seen with his car around the area.

10 Q Did he tell you why he didn't want to use his own car?

11 A Yeah, because he didn't want to be seen in it.

12 Q What happened when you arrived at the Enterprise?

13 A He picked the van and he rented the van out.

14 Q And who was the person who actually rented the van?

15 A You You.

16 Q You said it was a van.

17 Can you describe it for you us?

18 A It was a white van with a sliding door with just a driver
19 and passenger seat only, nothing in the back.

20 Q After You You rented the van, what happened next?

21 A We went to his house.

22 Q And where did You You live at the time?

23 A Fresh Meadow.

24 Q Approximately how many minutes did it take to get from
25 the Enterprise to You You's house in Fresh Meadows?

DAVID YU - DIRECT - MS. LASH

1603

1 A No more than 10 minutes. Not even 10 minutes.

2 Q When you arrived at You You's house, what happened?

3 A I chilled in his living room and then You You did what he
4 had to do. Like, he was making couple of sales.

5 Q And when you say, he was making a couple of sales, what
6 do you mean?

7 A Like, he was selling marijuana at that time. So he was
8 posting sales.

9 Q And what were you doing while he was making marijuana
10 sales?

11 A I was chilling in his living room playing with his dog,
12 watching T.V.

13 Q Did there come a time where you and You You left his
14 house?

15 A Yes, ma'am.

16 Q Where did you go?

17 A We went to GS.

18 Q What's GS?

19 A That's the karaoke bar where the victim died at.

20 Q And where is GS, the karaoke bar, located?

21 A On Fowler.

22 Q And what's the cross street?

23 A College Point.

24 Q Had you been to GS before?

25 A Yes, ma'am.

DAVID YU - DIRECT - MS. LASH

1604

1 Q How many times?

2 A Few times.

3 Q When you say a few times, can you give me an approximate
4 number?

5 A About 20.

6 Q Had you been to GS with You You?

7 A Yes, ma'am.

8 Q How did you get to GS from You You's house?

9 A I drove the van.

10 Q And was You You with you?

11 A Yes, ma'am.

12 Q Where did he sit?

13 A He sat in the passenger's seat.

14 Q Why did you and You You go to GS at this time?

15 A We wanted to see where there was cameras at around the
16 area to see if there was any blind spots.

17 Q And why were you looking for cameras and blind spots?

18 A I don't know. That's what You You wanted me to do.

19 Q What did you talk about while you were in the van?

20 A That if we ever get -- like, if we ever get caught and
21 questioned by the cops, why we was there, we was to say that
22 we was trying too see if You You's girl was cheating on him or
23 not. He was trying to catch his girl cheating on him.

24 Q When you got to GS, where did you go.

25 A Right across street. There's a parking lot for the bar.

DAVID YU - DIRECT - MS. LASH

1605

1 Q And what road is this parking lot around?

2 A I don't know. I don't know.

3 Q Okay.

4 A But it's right across the street.

5 Q And what happened while you were in the parking lot
6 across the street from GS?

7 A I saw police, so we drove off.

8 Q Where did you go?

9 A We went to College Point and Avery.

10 Q I'm going to show you, Mr. Yu, what's in evidence as
11 Government Exhibit 52.

12 MS. LASH: And this is in evidence, Ms. Campbell, so
13 it can be -- thank you.

14 (Exhibit published.)

15 Q Mr. Yu, can you see on the screen in front of you
16 Government's Exhibit 52?

17 A Yes, ma'am.

18 Q Now, you said when you first arrived at GS, you parked
19 across from GS in a parking lot.

20 Can you indicate on this map where you -- sorry,
21 we'll just give the computer a minute.

22 MR. MAZUREK: While we're waiting, can we have a
23 timeframe of what part of the night we're in.

24 Q Mr. Yu, were you looking at your watch at any point in
25 this night?

DAVID YU - DIRECT - MS. LASH

1606

1 A No, ma'am.

2 Q Do you know what time it was?

3 A No, ma'am.

4 THE COURT: Do you have an idea of what time it was?

5 Was it late at night? Was it early part of the

6 evening?

7 THE WITNESS: It was February, so it gets dark

8 early. So it was definitely getting dark. I don't know what

9 time it was, no, ma'am.

10 BY MS. LASH:

11 Q And now, Mr. Yu, I'll direct your attention back to the
12 screen in front of you, Government Exhibit 52. You mentioned
13 when you got to GS you were parked across the street in a
14 parking lot.

15 Can you indicate on this map where were you parked?

16 A Yeah.

17 Q I can't see what you're -- can you describe with your
18 words?

19 A You see where your -- yeah, right there.

20 Q Okay. So do you know which -- what road is across the
21 street, the highway that you can see in this map?

22 A Oh, it says Meridan Road.

23 Q And where were you parked in relation to this big road?

24 A Right under the highway. There's a parking lot for the
25 bar.

DAVID YU - DIRECT - MS. LASH

1607

1 Q Mr. Yu, do you know where Fowler Street is on this map?

2 A Yeah.

3 Q Can you describe to me where that is?

4 A It's where the bar is at.

5 Q Okay. So you're talking about the road that's running
6 along the bottom of the map from east to west where the cursor
7 is right now?

8 A All right.

9 Q Okay. And at the end of Fowler in the other direction,
10 with that larger road, what road is that?

11 A That's College Point.

12 Q Now, you said that you left the parking lot and you moved
13 the white van?

14 A Yeah.

15 Q Where did you move the white van to?

16 A I went up to College Point, I made a left, I went
17 straight to Pople, I made a right on, Pople, I went all the
18 way around to Avery and College Point.

19 Q When you say, Pople, do you mean if you're looking at the
20 streets, the three streets on the upper right side of the map,
21 do you mean the middle one there?

22 A Yeah, it says Pople Avenue. Because Avery is a one-way.

23 Q And then once you were on Pople Avenue, what did you do?

24 A I went straight, I made another right, and I made another
25 right, and I came down Avery, and then I parked around that

DAVID YU - DIRECT - MS. LASH

1608

1 corner right there. Yeah, right here. Yeah.

2 Q And the corner you're describing is the corner of College
3 Point and Avery.

4 Are you across the street from any landmark?

5 A Yeah, from a BP gas station.

6 Q And can you describe where the BP gas station is on this
7 map?

8 A Right across the street. Yeah, right there.

9 MS. LASH: Thank you, Ms. Reed.

10 Q When you moved the car to Avery and College Point, what
11 were you doing?

12 A We was just chilling right there. You You was playing
13 with his phone and he got hungry and he said let's go get
14 shish kebab. So we went to Kissena and Holly and got some
15 shish kebab. And then we came back, back to the same spot at
16 Kissena and -- at Avery and College Point. I finished eating
17 first, then I went to the BP gas station, and then I took a
18 little bump at the gas station.

19 Q And so after you ordered the shish kebab, you said you
20 came back to Avery and College Point; is that right?

21 A Yes, ma'am.

22 Q And then you said you went to the BP gas station and you
23 took a bump?

24 A Yeah.

25 Q A bump of what?

DAVID YU - DIRECT - MS. LASH

1609

1 A Of ketamine.

2 Q How big a bump did you take of ketamine?

3 A I took, like a small amount, like, a half a finger nail.

4 Q How does a half a finger nail compare to the typical dose
5 that you testified you took, a half a bag?

6 A Nothing. It's just -- nothing, really. Nothing at all,
7 actually.

8 Q Can you give me an idea of what, like, percentage portion
9 a half a finger nail would be as compared to a half a bag of
10 ketamine?

11 A Like not even a .1.

12 Q I'm sorry, I didn't hear you?

13 A Not even like a .1.

14 Q Not even a .1?

15 A Yeah.

16 Q And how did the bump with that you described as like a
17 half a finger nail, how did that affect you?

18 A Nothing. It just stopped me from itching.

19 Q After you took that bump of ketamine, what did you do?

20 A I went back to the car and then You You told me drive
21 back to his house.

22 Q And did You You say anything to you at the time?

23 A No.

24 Q Did you operate the car?

25 A Yes.

DAVID YU - DIRECT - MS. LASH

1610

1 Q When you got back -- why did you go back to You You's
2 house?

3 A You You said to go back to his house.

4 Q And what were you doing when you got back to You You's
5 house?

6 A I was chilling in his living room, and then You You had
7 made a couple more sales, I think.

8 Q And while you were at You You's house, did You You stay
9 at his house the entire time?

10 A No, he stepped out right quick.

11 Q Do you know how long he's gone?

12 A No, not really. No more than 30 minutes.

13 Q And what did you do while You You was gone?

14 A I went to the bathroom and I took another little bump.

15 Q And what -- when you say a bump, I want to be specific.

16 What do you mean?

17 A Same amount that I just took at the bathroom.

18 Q And what did you take a bump of?

19 A Of ketamine.

20 Q And you said the same amount.

21 What do you mean by that?

22 A Like a half a finger nail.

23 Q And how did this bump affect you?

24 A Nothing.

25 THE COURT: I'm sorry, when in time did you do the

DAVID YU - DIRECT - MS. LASH

1611

1 second hit?

2 THE WITNESS: Oh, when I went back to his house and
3 when You You left the house for a second.

4 THE COURT: So you did the second bump in his house?

5 THE WITNESS: In the bathroom.

6 THE COURT: In the bathroom of his house?

7 THE WITNESS: Yeah.

8 BY MS. LASH:

9 Q What happened after you took your second bump of
10 ketamine?

11 A I came back -- I came back to the couch and I was just
12 chilling watching T.V. until You You returned.

13 Q And did You You say anything to you when he returned?

14 A No.

15 Q Did there come a time where you left You You's house
16 again?

17 A Yes. Later on.

18 Q Where did you go?

19 A We went to this restaurant called Lake Pavilion.

20 Q And how do you get to the restaurant?

21 A I drive the van.

22 Q And who, if anyone, is with you?

23 A You You's in the passenger seat.

24 Q You said that the restaurant is called Lake Pavilion?

25 A Yes.

DAVID YU - DIRECT - MS. LASH

1612

1 Q Where is it located?

2 A On 59th or 60th and Main Street.

3 Q In what city?

4 A Queens.

5 Q What does the restaurant look like?

6 A It's a big restaurant. Tall windows, fish tanks, inside
7 the windows.

8 Q What do you do when you get to the restaurant?

9 A You You told me circle around to see if you could see
10 somebody through the window.

11 Q Did you know what was going on inside the restaurant when
12 you arrived there?

13 A Yes, ma'am.

14 Q And what was going on?

15 A The victim was having a company Chinese New Year dinner
16 party.

17 Q And how did you learn that?

18 A You You told me.

19 Q After you circled to see the windows, where did you do
20 go?

21 A We drove back around, we circled around again, we went
22 down to 60th and -- we went to the back of the restaurant
23 where the big parking lot was, and You You told me to look for
24 the specific car, but he found it first. He spotted the car
25 first, and he told me drive back around and park.

DAVID YU - DIRECT - MS. LASH

1613

1 Q What car did You You tell you to look for?

2 A I don't remember, ma'am.

3 Q Now, you said that you parked by the back parking lot of
4 the restaurant; is that right?

5 A Yes, ma'am.

6 Q I'm going to show you what's in evidence as Government's
7 Exhibit 415.

8 MS. LASH: And Ms. Reed, if we could go to Page 4.

9 (Exhibit published.)

10 Q Mr. You, do you see Government Exhibit 414, Page 4?

11 A Yes, ma'am.

12 Q And what's shown in this picture?

13 A That's the back parking lot.

14 Q The back parking lot of what?

15 A Of the restaurant.

16 Q And you said that you parked in this vicinity; is that
17 right?

18 A Yes, ma'am.

19 Q And can you describe to me where you parked?

20 A By the tree, exact.

21 Q And when you say, the tree --

22 A Yeah, right there.

23 Q And that's the tree behind the white car that's parked on
24 the side of 60th Avenue?

25 A Yes, ma'am.

DAVID YU - DIRECT - MS. LASH

1614

1 Q At this point in time, do you know what time it is?

2 A No, ma'am.

3 Q Was it dark outside?

4 A Yes, ma'am.

5 Q And at this point, what happens next?

6 A I parked up for a little bit and then he sees the car
7 coming out and he tells me follow that car, so I followed the
8 car.

9 Q And do you know who's inside the car?

10 A No. But I -- it was my guess though.

11 Q Okay. So what did you do when he told you to follow the
12 car?

13 A I followed the car and went it went to GS. It went all
14 the way to GS, and we was a little back, and then You You told
15 me to wait to see them park their car and he wanted to make
16 sure that dude came out of the car. And, like, a couple of
17 people came out the car. When he saw them, he told me drive
18 off now, and I drove off and we went back to Avery and College
19 Point.

20 Q And when you were observing this car -- and to be clear,
21 do you remember what kind of car it was.

22 A No, ma'am.

23 Q And what did you see what when you were looking at the
24 car at GS?

25 A You mean when they parked?

DAVID YU - DIRECT - MS. LASH

1615

1 Q Yes.

2 A Numerous people came out. I forgot how many people, but
3 it was more than one people that came out the car, and when he
4 seen the person, he told me to drive off and go back to Avery
5 and College Point.

6 Q And where did you observe the car in the vicinity of GS?

7 A Under the highway where the parking lot is.

8 Q And how did that compare to where you had parked with You
9 You earlier?

10 A What do you mean?

11 Q Was it in the same location where you and You You had
12 parked earlier that night?

13 A No. I parked at Avery and College Point.

14 Q And before you were at Avery and College Point, where
15 were you?

16 A Oh, under the highway too. Yeah, around that same spot.

17 Q You said that you left the area and you went back to
18 Avery and College Point?

19 A Yeah.

20 Q Was the place that you parked the car, how did it compare
21 to where you had parked earlier in the night?

22 A It's the same spot.

23 Q And what happened when you got to Avery and College
24 Point.

25 A We was just parked there, we was just idling. He got

DAVID YU - DIRECT - MS. LASH

1616

1 hungry again, so we went to get shish kebab again, but we went
2 somewhere else. We went on Prince Street. We got the shish
3 kebab, came back, finished eating, and then we was just parked
4 there for a little bit, and then he tells me to -- he tells me
5 circle the block again where GS is at. So I circle it. So I
6 go down the one-way to Avery, and then when I'm driving, I see
7 a car, and then I turn and I see Zhe in there with somebody
8 else in the car. I'm about to pull over to him to say what
9 up, but You You tells me, don't let Zhe see me, just drive
10 off. So I drive off and I come back to Avery and College
11 Point again. I parked there.

12 Q I want to talk about when you circled the block, Mr. Yu.

13 MS. LASH: So Ms. Reed, If you could pull up
14 Government Exhibit 52, please.

15 Q Now, Mr. Yu, you said -- can you describe the route that
16 you took when you circled the block?

17 A All right. I'm at Avery and College Point, right.

18 Q The same place that you had parked earlier, right?

19 A Yeah, yeah.

20 Q And where did you do go next?

21 A I go straight down right there. I'm going and I stop
22 right there. Like, around that area, that's when I see Zhe
23 parked in a white four-door car. I'm about to pull over to
24 him to say what up. That's when You You tells me, yo, don't
25 let Zhe see me, just drive off, so I drive off.

DAVID YU - DIRECT - MS. LASH

1617

1 MS. LASH: And Ms. Campbell, is this screen working
2 for the jurors? I just want to make sure that they can --

3 THE COURTROOM DEPUTY: It's going in and out. It
4 was working earlier and then it stopped.

5 THE COURT: Can you turn the light down, maybe?

6 THE COURTROOM DEPUTY: Yes, I can do that.

7 MS. LASH: All right. Thank you.

8 BY MS. LASH:

9 Q Mr. Yu, okay. So, I'm sorry. Can I bring you back to
10 the time where you saw Zhe and the white car?

11 A Yeah.

12 Q So you indicated that you were on Avery Avenue, right?

13 A Yeah.

14 Q And what is the big gray rectangle that runs along the
15 side of Avery Avenue?

16 A That's Home Depot.

17 Q Okay. You said you saw a white car.

18 Can you describe the car for me?

19 A It was a white four-door car.

20 Q What, if anything, did you notice about the car's make
21 and model?

22 A It was a old car.

23 Q And you said you saw Zhe?

24 A Yeah.

25 Q Where was he sitting in the car?

DAVID YU - DIRECT - MS. LASH

1618

1 A In the driver's seat.

2 Q And was anybody else in the car?

3 A Yeah, somebody else was with him.

4 Q And who was that person?

5 A I don't know him.

6 Q What were you the lighting conditions when you saw Zhe?

7 A It was pretty bright.

8 Q Well, it was the nighttime, right?

9 A Yeah. But there was a lot of, like, -- it's a industrial
10 area, so a lot of lights was on, a lot of factory lights was
11 on.

12 Q And you said that you noticed the white car and saw Zhe
13 while you were circling the block?

14 A Yeah.

15 Q How fast were you driving?

16 A Not that fast.

17 Q When you say, not that fast, can you give me an estimate
18 of your miles per hour?

19 A Like five, 10 miles.

20 Q And where were you in relation to Zhe?

21 A I was in the driver's seat.

22 Q And who, if anyone, was between you and Zhe?

23 A Oh, You You.

24 Q And where was You You seated?

25 A The passenger seat.

DAVID YU - DIRECT - MS. LASH

1619

1 Q Can you estimate for me how far away Zhe was from you?

2 A He wasn't that far.

3 Q In feet or --

4 A I don't know.

5 Q And you said you saw Zhe?

6 A Mm-hmm.

7 Q What did you see?

8 A I saw his whole face. I made eye contact with him,
9 hundred percent.

10 Q Are you certain that the person you saw in the driver's
11 seat of the white sedan was Zhe?

12 A Yeah.

13 Q You said you didn't recognize the person in the
14 passenger's seat?

15 A Yeah.

16 Q How long did you --

17 A I didn't really see his face.

18 Q How long did you observe the person in the passenger's
19 seat?

20 A I was driving, I just saw him, and then when I saw him, I
21 was going to pull over right next to him.

22 Q And you said You You told you, don't let him see you,
23 right?

24 A Yeah.

25 Q Did you ask him any questions about why he said that?

DAVID YU - DIRECT - MS. LASH

1620

1 A No, not at that time. It went over my head at that time.

2 Q Now, Mr. Yu, after you had driven the length of Avery
3 Avenue, where did you go next?

4 A I circle back and I go back to College Point and Avery.

5 Q And so do you see where the blue line that was just
6 drawn?

7 A Yeah.

8 Q What road is that; do you know?

9 A That's Avery. I make a left.

10 Q On to what road?

11 A I go back to College Point.

12 Q And then what road -- how did you get back to College
13 Point?

14 A I make a left to Pople, go all the way to Pople then make
15 a right, and I make another right at Pople and another right
16 to Avery.

17 Q And you stop there?

18 A Yeah. I park at the same spot.

19 Q What happened while you were parked at that location at
20 Avery and College Point?

21 A We was parked there for a little bit until he gets, like,
22 a phone call later on.

23 Q And who is he?

24 A You You.

25 Q Okay. What language is You You speaking on that phone

DAVID YU - DIRECT - MS. LASH

1621

1 call?

2 A I don't remember.

3 Q Does You You make any other phone calls?

4 A Yeah. Right after that phone call, he WeChat somebody
5 because when you call somebody through WeChat, it's a specific
6 ring tone that blares out.

7 Q And -- I'm sorry. Go ahead, Mr. Yu.

8 A When he calls somebody from WeChat, he was speaking in
9 Chinese. I ain't understand what he was saying. He hung up.
10 I stepped out real quick -- not right away. I stepped out
11 though. When I went to go smoke a cigarette and I was just
12 chilling right there, and then, like, I can't say what exact
13 timeframe, I heard the four gunshots. Once I heard the
14 gunshots, I went back into the car and I told You You I was,
15 like yo, I think it just went down, and I started driving off.
16 And he asked me, yo, are you sure. And I said yeah, bro, I
17 just heard the gunshot. And then --

18 Q Let me stop you there for a minute, Mr. Yu.

19 You testified that that second phone call that you
20 think was a WeChat phone call, right?

21 A Yeah. I know it was a WeChat phone call.

22 Q Okay. And You You was speaking in Chinese?

23 A Yeah.

24 Q Have you ever been present when You You has spoken to Zhe
25 on the phone?

DAVID YU - DIRECT - MS. LASH

1622

1 A Yeah.

2 Q And what language do they communicate in?

3 A In Chinese.

4 Q Then you testified that you heard the gunshots and you
5 got back into the van, right?

6 A Yes, ma'am.

7 Q Could you see anything at that point?

8 A Nah.

9 Q And what happened next?

10 A I drove off and I'm telling You You, like, it went down,
11 and then he asked me if I was sure and I was, like, yeah. So
12 he started calling somebody, and then when he called the
13 person, the person didn't pick up, so he was like, yo -- he
14 said, yo, Zhe not picking up. I said, yo, let him get away
15 real quick. You know what I mean, it just went down. Just
16 let him get away. He's going to call you probably when he
17 gets away safely. We go back to his house -- we go back to
18 You You's house and I chill there for a little bit and then I
19 go back home to the Bronx with the van.

20 Q And when you say, the van, do you mean the Enterprise
21 van?

22 A Yes, ma'am.

23 Q Do you see You You the next day?

24 A Yes, ma'am.

25 Q Do you have a discussion about the shooting?

DAVID YU - DIRECT - MS. LASH

1623

1 A Yes, ma'am. He tells me that Zhe away, everything went
2 well, that he -- yeah.

3 Q Where were you in the days following the shooting?

4 A I was in New York.

5 Q And who, if anybody, did you reach out to following the
6 shooting?

7 A I reached out to my boy LB.

8 Q Who is LB?

9 A My boy Carlos.

10 Q And why did you reach out to Carlos?

11 A I needed a place to stay low at real quick. I was at
12 parole -- I was on parole at that time, and You You, he left
13 somewhere. You know may what I mean, and he didn't let me
14 know, so I needed a place to stay. I didn't want to be around
15 be, like, none of my Asian friends. So I reached out to one
16 of my blood friends named Carlos and I told him the situation.
17 I showed him way video clip of what happened, and I said yo, I
18 need a place to stay real quick bro. I'm involved in this.

19 Q And you told Carlos you were involved in the shooting?

20 A Yes, ma'am.

21 Q Did you tell Carlos you were the shooter?

22 A No, ma'am.

23 Q When is the next time that you saw Zhe after the murder?

24 A I don't know exactly when. But it was me and You You, we
25 went to a karaoke spot on Union Street and northern on the

DAVID YU - DIRECT - MS. LASH

1624

1 third floor. While we was going up the elevator -- while we
2 was in the elevator, You You tells me, don't bring up the
3 shooting to Zhe, that Zhe doesn't know that I was involved.

4 Q Did you ask You You any questions after he told you that?

5 A At that time, I wanted to, but we was already walking to
6 the room that Zhe was at, and then when I went, it was Zhe and
7 some kid named Union. They was over there.

8 Q And what happened at that karaoke bar?

9 A In the beginning, we gave each other a pound like
10 everything was cool, and then we ordered some drinks and then
11 they just started -- they went to the corner, You You and Zhe
12 and Union, they was in the corner. They just started speaking
13 Chinese and I just got paranoid.

14 Q Why did you get paranoid?

15 A I just got paranoid. I thought they was talking about
16 me, so I left.

17 Q In the months following the murder, how did you feel?

18 A You You wasn't -- like, he wasn't really giving me detail
19 of what was going on. Like, I felt, like, he was keeping me
20 out the loop out of it, like, he was keeping me in the dark.
21 So, like, I started picking on to that. So now, like, I
22 started getting paranoid around that.

23 I didn't know how he felt about me I didn't know how
24 Zhe felt about me, you know what I mean? I didn't know where
25 I stood at with the job. Like, why didn't he want people to

DAVID YU - DIRECT - MS. LASH

1625

1 know that I was involved. I mean, it wasn't a small job,
2 like, somebody died on it. Like, you want to know ever player
3 that was involved in this. Like, why are you not letting them
4 know I was involved.

5 Q And how did you cope with these feelings of paranoia?

6 A I thought they was going to move on me. I thought they
7 thought that I was a liability, so I got myself a gun and I
8 protected myself on it.

9 Q And when you saw you thought they were going to move on
10 you, what do you mean by that?

11 A Like, I'm not saying that they was, but that was in back
12 of my thought, like, you know what I mean? Where am I in this
13 puzzle, you know what I mean? Like, what piece do I belong
14 with this, you know what I mean?

15 You You wouldn't tell me. He just keep telling me
16 don't worry about it, you know what I mean? I'm asking him,
17 like, when we going to go get paid? He's telling me wait
18 until the summer, you know what I mean? Et cetera, et cetera.

19 Q When did you obtain a gun, Mr. Yu?

20 A I don't remember the exact month.

21 Q What season was it?

22 A It was getting nice. It was getting nice.

23 Q And when you say nice, what do you mean?

24 A The weather was getting nice. It wasn't cold no more.

25 Q And where did you obtain a gun?

DAVID YU - DIRECT - MS. LASH

1626

1 A What does that mean?

2 Q Where did you get a gun?

3 A From one of my friends.

4 Q Which friend?

5 A My boy Alan.

6 Q After you got gun, what did you do with it?

7 A I just walked around with it.

8 Q Did you test it?

9 A Yes, ma'am.

10 Q How did you do that?

11 A I shot it in the park.

12 Q At this point in, let's say the summer of 2019, had you
13 received anything for your participation in the murder?

14 A No, ma'am.

15 Q And what was your relationship like with You You in the
16 summer of 2019?

17 A I played it cool with him.

18 Q How was You You acting at this time?

19 What did you observe?

20 A He started spending a lot of money now. Like, he was
21 gambling heavy, he was buying nice clothes.

22 Q What kind of clothes?

23 A Like, he was buying Gucci this, like Louis Vuitton that.

24 Q How else was You you spending money at this time?

25 A He brought a watch, he bought a nice watch.

DAVID YU - DIRECT - MS. LASH

1627

1 Q What kind of a watch.

2 A He bought a Yacht-Master.

3 Q Who makes a Yacht-Master?

4 A Rolex.

5 Q What else, if anything, did he buy?

6 A Oh, he got a chain.

7 Q What kind of chain?

8 A It was a gold 150-gram chain.

9 Q Have you ever owned a chain like that?

10 A Nah, not like that. I owned a chain before.

11 Q And what's your understanding of how much a gold 150-gram
12 chain can cost?

13 A It's a heavy chain.

14 Q And what's your understanding of how much it can cost?

15 A Like 10,000 maybe. About. Yeah.

16 Q So gambling buying nice clothes a Rolex watch a change.
17 What, if any, other purchases did You You make?

18 A Oh, he bought a car.

19 Q What kind of care?

20 A He bought a M4 BMW.

21 Q Anything else?

22 A Later on, he bought a monkey.

23 Q And what are -- how are you guys spending time together
24 in the summer of 2019?

25 A We cool. Like, we chilling every night, we going out

DAVID YU - DIRECT - MS. LASH

1628

1 every night, we drinking every night.

2 Q And how did that compare to the activities that you were
3 doing before the murder?

4 A Like, we used to drink, we used to go out a lot. But
5 like, now when he goes out now, it's like he goes extra.
6 Like, the bars we go to, like, we'll get the karaoke spots,
7 it's girls there that drinks with us, and he tips them \$100 or
8 so. Like, we'll get a girl, and now he's getting, like,
9 three, four girls.

10 Q And are you guys eating out?

11 A Yeah. Every day.

12 Q At this time by the end of the summer of 2019, had you
13 received any payment for your participation in the murder?

14 A No, ma'am.

15 Q You testified that in August of 2019, you went back to
16 prison; is that right?

17 A Yes, ma'am.

18 Q And where were you held?

19 A I was in VCBC.

20 Q What's VCBC?

21 A That's the Boat that's connected with Rikers Island.

22 Q And what was your relationship like with You You after
23 you got locked up.

24 A He was mad at me. He was mad at me.

25 Q And why was he mad at you?

DAVID YU - DIRECT - MS. LASH

1629

1 A Because I got locked up.

2 Q Did you see You You while you were incarcerated?

3 A Yeah, he came to visit me.

4 Q And did you have a conversation about the murder?

5 A Yeah. He got mad at me that I got in trouble and he told
6 me, like, I was supposed to stay out of trouble until the end
7 of the summer, that's when we was going to get paid, and then
8 we was going to leave -- like, we was going to be chilling
9 after that.

10 Q When were you released from prison?

11 A November.

12 Q Of 2019?

13 A Yes, ma'am.

14 Q And in November when you were released, did you see You
15 You?

16 A Yeah.

17 Q And did you receive any money at that time?

18 A No, ma'am.

19 Q Mr. Yu, you testified you were arrested in April of '21
20 on methamphetamine charges; is that right?

21 A Yes, ma'am.

22 Q While you were incarcerated, did you try to figure out
23 You You's phone number so you could contact him?

24 A Yes, ma'am.

25 Q And what happened?

DAVID YU - CROSS - MR. MAZUREK

1630

1 A I called back the dude that gave me his number, he told
2 me that he told You You that he gave me his number and that
3 You You got mad, so I never reached out to him.

4 Q When is the last time you spoke to You You?

5 A Like 2020, maybe.

6 Q To this day, have you ever received anything for your
7 participation in the murder?

8 A No, ma'am.

9 MS. LASH: Nothing further, Your Honor.

10 THE COURT: All right. I think counsel want to go
11 out of order which the Court has permitted.

12 So Mr. Mazurek will inquire first and then
13 Mr. Kousouros.

14 MR. MAZUREK: Thank you, Judge.

15 CROSS-EXAMINATION

16 BY MR. MAZUREK:

17 Q Mr. Yu, my name is Henry Mazurek, and I'm the defense
18 lawyer for Zhe Zhang and we have never met before, correct?

19 A Yes, ma'am. I mean, yes, sir.

20 Q In fact, you are aware that I made a request through your
21 lawyer, Mr. Brownstein, to speak with you, but you've declined
22 to interview with me, correct?

23 A Yes, sir.

24 Q On the other hand, you met with these folks, the
25 prosecutors and the agents for I think you said over 20 times

DAVID YU - CROSS - MR. MAZUREK

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1 correct?

2 A Yes, sir.

3 Q And before you came to Court today, you practiced the
4 questions and answers that you were just asked by Ms. Lash,
5 correct?

6 A No, ma'am. No.

7 Q You never heard those questions before?

8 A Yeah. But we never practiced it.

9 Q Oh, it wasn't a practice for you?

10 A Yeah, we never practiced it.

11 Q But you were asked questions and you answered just like
12 you did today?

13 A Like, similarities.

14 Q Similarities?

15 A Yes.

16 Q Did you do it last week while we were on break for trial?

17 Did you meet with them and have them ask you
18 questions and give answers just like you did today?

19 A I met up with them last week.

20 Q Yes?

21 A Yes, I did. Last week.

22 Q Okay. And you met with the prosecutors and the agents
23 and they asked you questions and you gave answers, right?

24 A Yes, sir.

25 Q Did they pretend to be me as the defense lawyer for a

DAVID YU - CROSS - MR. MAZUREK

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1 time about asking you questions on cross-examination?

2 A What do you mean?

3 Q Did they say, okay, this is what a defense lawyer may ask
4 you, so you know, to help prepare you for the questions that
5 you might hear from me, Mr. Mazurek?

6 A Oh, yes.

7 Q Okay. And you did that last week.

8 How many times did you do it last week?

9 A Last week, one time.

10 Q One time?

11 A Yeah.

12 Q How many hours did you spend?

13 A I don't know.

14 Q Was it more than three?

15 A Oh, yeah.

16 Q It was, like, the whole day?

17 A Not really, nah. Not the whole day.

18 Q But more than three hours?

19 A Yeah.

20 Q Less than seven hours?

21 A Yeah. Something like that.

22 Q Okay. And let me ask you, Mr. Yu, I mean, you -- you've
23 had a long criminal history, right? You've just testified on
24 direct examination about your multiple arrests, right?

25 A Yes. (Continued on the following page.)

D. Yu - cross - Mazurek

1633

1 CROSS-EXAMINATION

2 BY MR. MAZUREK: (Continuing)

3 Q And there are many times when you are committing crimes
4 that you never got arrested; right?

5 A Yes.

6 Q You have committed more robberies than you can count;
7 right?

8 A Yes.

9 Q And you also are someone who owned firearms for a large
10 part of your life; right?

11 A No. I did own a firearm.

12 Q I'm sorry?

13 A I did own a firearm.

14 Q Guns?

15 A Not all my life, though.

16 Q Let me ask you this: Since you were 19, that's when you
17 were first arrested and incarcerated, right?

18 A Yes.

19 Q Up until the time you were arrested for the
20 methamphetamine case in April of '21, that's ages 19 to what,
21 about 32?

22 A Yes.

23 Q Is that fair?

24 A Yes.

25 Q And out of those 13 years or so, you were in and out of

D. Yu - cross - Mazurek

1634

1 prison; right?

2 A Yes.

3 Q You spent several years in prison within those years of
4 19 and 32; correct?

5 A Yes.

6 Q Especially because you almost always violated parole and
7 went back to prison, right?

8 A Yes.

9 Q So, for those few years when you were actually on the
10 street, you sometimes owned guns; right?

11 A No.

12 Q Well, let me let me ask you this: When you were 19 years
13 old you had a Glock 40 from Shogun; right?

14 A Yes.

15 Q So, you started -- your first time you possessed a gun
16 was when you were 19; right?

17 A Yes.

18 Q Sometimes you would carry, you would have four guns in a
19 fanny pack; isn't that right?

20 A No.

21 Q You never told these agents and the prosecutors that you
22 would have four guns and you kept it -- you owned four guns
23 and you kept it in a fanny pack?

24 A No.

25 Q Did you meet --

D. Yu - cross - Mazurek

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1 A I don't remember that.

2 Q You don't remember that?

3 A I don't remember that at all.

4 Q You met with these guys for quite a lot, like over 20
5 times, right?

6 A Yes.

7 Q In one of those instances, and I'm referring to, for the
8 Government's benefit, David Yu 3500 number 10, on December
9 9th, 2021, page 4, isn't it true you told these agents and the
10 prosecutors that you owned four guns and you kept them in a
11 fanny pack?

12 A I don't remember that.

13 Q You don't remember that?

14 A Yeah.

15 Q Is there something that I can show you that might refresh
16 your memory?

17 A I guess, yeah.

18 Q All right. We will move on. We'll get back to that
19 later.

20 But you did keep guns in a fanny pack; right?

21 A Yeah. I had a gun -- I had a gun in a fanny pack.

22 Q All right. You just maybe didn't have four at one time?

23 A Yeah, I never had four guns.

24 Q Okay.

25 You would own one gun at a time; right?

D. Yu - cross - Mazurek

1636

1 A (No response.)

2 Q Right? You would only have one gun at a time; right?

3 A Yeah.

4 Q You would typically have pocket pistols, is that right,
5 as you would call them as something you would fit into your
6 pocket or a fanny pack?

7 A I don't know. I don't know what that is.

8 Q You don't know what that is?

9 A No.

10 Q What do they call it on the street, a gun you can fit in
11 your pocket?

12 A I don't know what they call it.

13 Q What would you call it?

14 A A pistol.

15 Q So, did you own a pistol?

16 A Yeah, I owned a pistol.

17 Q You owned a .40 Glock, right?

18 A No, I never had a .40 Glock.

19 Q No? Isn't that what you just said you got from Shogun?

20 A It wasn't mine, though.

21 Q No, it was your big brother's; right?

22 A Yeah.

23 Q So you just took that, you took a hit for that one
24 because it was really your big brother's; right?

25 A Yeah.

D. Yu - cross - Mazurek

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1 Q But you had access to it; right?

2 A Yeah.

3 Q In fact, you were supposed to have access to it as a gang
4 member?

5 A Yes.

6 Q In order to be able to do harm if you needed to do harm,
7 if the gang wanted you to do that; right?

8 A Yes.

9 Q And that was just your first gang that you joined, right,
10 that's the MMP one?

11 A Yes.

12 Q And the Bloods are even more violent than MMP, right?

13 A They're both violent.

14 Q They're both violent?

15 A Yeah.

16 Q You also had a G37 that you got from Danny; right?

17 A No.

18 Q You don't remember having a G37?

19 A I never had a G37.

20 Q No? Do you remember the Latimer Projects shooting?

21 A That wasn't -- that wasn't me.

22 Q That wasn't you, that was one of your friends, Chris Lee?

23 A Yeah.

24 Q He did the shooting?

25 A Yes.

D. Yu - cross - Mazurek

1638

1 Q You provided the gun, right?

2 A I didn't.

3 Q That wasn't your gun that time?

4 A No, that wasn't.

5 Q That was another gang member's gun?

6 A No.

7 Q It was just a friend's gun?

8 A That was his gun. That wasn't my gun.

9 Q Did you have access to that gun?

10 A No.

11 Q He didn't share it with you?

12 A I never asked him, sir.

13 Q So, the guns that you had, what kind of caliber did you
14 normally get?

15 A I had a .380.

16 Q .380?

17 A Yeah, and I had a Glock 19.

18 Q A .380 and a Glock 19.

19 Now, you testified on direct examination about the
20 events that transpired on February 11th to the 12th of 2019.

21 You testified that you initially had conversations
22 with You You in -- as soon as you got out of prison in
23 November of 2018 to kill a man; right?

24 A No, not -- not -- not November.

25 Q That's when you got out?

D. Yu - cross - Mazurek

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1 A Yeah, I got out in November.

2 Q Then almost immediately he called you; right?

3 A Yeah.

4 Q Your best buds, best friends; right?

5 A Yeah.

6 Q And the first thing that he called you about was killing
7 a man, right, that was the job?

8 A Yes. He had -- he told me he had a job for me.

9 Q And initially you said, you told him yes, you'd do it;
10 right?

11 A Yes.

12 Q But then you got cold feet, you said, I don't want do
13 this, right?

14 A Yes.

15 Q But it's your testimony that you didn't tell You You
16 that, right?

17 A Yes.

18 Q Instead on February 6 I think we looked at an exhibit of
19 text messages on February 6 which is, by my count, five days
20 before the shooting and you said, I'm gonna -- I'm gonna be
21 the one to clap him; right?

22 A Yes.

23 Q But you didn't mean that, right, that was just your text
24 message at the time?

25 A Yes.

D. Yu - cross - Mazurek

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1 Q Okay. And then on February the 13th, sir, that's just a
2 day or so after after the murder; right?

3 A Yes.

4 Q You contacted someone that you knew -- that you called
5 LB; right?

6 A Yes.

7 Q LB was a fellow by the name of Carlos Senquiz; right?

8 A Yes.

9 Q And Carlos Senquiz is a fellow Blood member; correct?

10 A Yes.

11 Q He was a fellow Ape as you called each other; right?

12 A Yes.

13 Q A Gorilla Stone set; right?

14 A Yes.

15 Q And as you called it, it's a violent gang; right?

16 A (No response.)

17 Q Is it a violent gang, sir?

18 A Yes.

19 Q Now, you contacted Carlos Senquiz on February 13th and
20 you were chatting with him on text messages; right?

21 A Yes.

22 Q And you weren't chatting about just nothing, you were
23 chatting about the shooting of Chris Gu, that's the fellow
24 whose name -- the victim; right?

25 A Yes.

D. Yu - cross - Mazurek

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1 Q You later learned that's the victim's name; right?

2 A Yes.

3 Q You didn't want to know right before you shot him, right?

4 A I never shot him.

5 Q Well, let me say, when you contacted Carlos Senquiz on

6 February 13th, the date after he was shot, you sent him a

7 YouTube video link of his shooting; right?

8 A Yes.

9 Q And you told them -- you called him Scrap, is that right,
10 is that the word that you used for him?

11 A Yes.

12 Q That's a Blood term?

13 A Yes.

14 Q And you told him, Yo, Scrap, you heard what happened in
15 the hood; right?

16 Is that what you told him?

17 A Yes.

18 Q Do you remember that?

19 A Yes.

20 Q And you sent him that video link, right, of the shooting?

21 A (No response.)

22 Q Yes?

23 A Yes.

24 Q And you asked him right then and there, Yo, Scrap, I need
25 an extra black jacket; right?

D. Yu - cross - Mazurek

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1 A Oh, yes, I did ask him for a black jacket.

2 Q Okay. And that is a gun; right, sir?

3 A No, sir, that's a black jacket.

4 Q You're saying that right then when you asked him, Yo,
5 Scrap, I need an extra black jacket, you were actually talking
6 about an outerwear, a coat to wear in the wintertime?

7 A Yes, sir.

8 Q Okay. Why, because you had to get rid of the black puffy
9 jacket you were wearing that night on February 12th?

10 A No, that's not the reason why. I just wanted -- I just
11 needed a new jacket.

12 Q You just needed a new jacket?

13 A Yeah.

14 Q And you needed a gun, too; right?

15 A No.

16 Q Well, you asked him for a gun; right?

17 A What --

18 Q You just testified on direct examination that you needed,
19 you wanted to get a gun after this happened?

20 A Yeah, but not from him, though.

21 Q You didn't ask from LB?

22 A No.

23 Q You asked from other gang members?

24 A No. I just asked one person and I got it from him.

25 Q The first person you asked for it, you got it from Allen

D. Yu - cross - Mazurek

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1 Wong?

2 A No.

3 Q Who is Allen?

4 A Somebody, not Allen Wong.

5 Q Are you afraid to say, you can't say the name because
6 you're protecting someone?

7 A No.

8 Q So, why can't you tell me who you got the gun from, sir?

9 A I just did, sir. His name is Allen.

10 Q What's his last name?

11 A I don't know his last name.

12 Q Who is he? How do you know him?

13 A I know him from my neighborhood.

14 Q How long did you know him?

15 A Like 2011, since 2011.

16 Q All right. So you've known him for about 12 years.

17 You don't know his last name, but you know him from
18 the neighborhood, is that what you're telling this jury?

19 A I know him by Allen.

20 Q That's all you know him by?

21 A Yeah.

22 Q Is he a gang member with you?

23 A No.

24 Q He's just a friend?

25 A Yeah.

D. Yu - cross - Mazurek

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1 Q And you're protecting him now?

2 A Why would I protect him for?

3 Q Because you got a gun from him, right, and that was just
4 another gun that you got in your long list of guns; right?

5 A No.

6 Q And when you went to Carlos Senquiz, you tried to go to
7 the Bland Projects to hide out after the shooting?

8 A Yes.

9 Q That's where Carlos Senquiz lived, in the Bland Projects;
10 right?

11 A Yes, sir.

12 Q And you asked Mr. Senquiz, when you saw him there on
13 February the 13th, you asked him, Can you recognize me in this
14 video, the YouTube video you sent him; right?

15 A No, I don't remember that at all, sir.

16 Q And you didn't just tell Carlos Senquiz that you were a
17 shooter, you told other people, right?

18 A I don't remember none of that.

19 Q You told Chris Lee, right?

20 A No.

21 Q You don't know who Chris Lee is?

22 A I know who Chris Lee is.

23 Q Chris Lee is a good friend of yours, right?

24 A No.

25 Q No? You stayed with him and his mom from the years of

D. Yu - cross - Mazurek

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1 about 2012 and 2013; right?

2 A (No response.)

3 Q You didn't stay with them in their house?

4 A I slept over his house.

5 Q Well, didn't his mom kick you out because you brought a
6 gun to the house?

7 A No. I let him borrow my BB gun, and then he had the BB
8 gun in his closet and his mom found it.

9 Q It was just a BB gun?

10 A Yeah.

11 Q His mom wouldn't know that because she knows that you
12 were rolling around with real guns all the time; right?

13 A I don't know. I can't answer that.

14 Q And when Carlos Senquiz -- and when you asked Carlos
15 Senquiz if you can recognize the person in the video is
16 because you were afraid that you would be identified as the
17 shooter; isn't that right?

18 A No, sir.

19 MR. MAZUREK: Your Honor, would this be a good time
20 to break?

21 THE COURT: All right.

22 Ladies and gentlemen, we will break for the evening.
23 I am trying to make up for lost time, so if everyone could be
24 here, we need to start promptly at 9 o'clock.

25 I think Tiffany said you need to be here around

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1 8:30, so we can make sure everybody is here and ready to go.

2 The object is to keep moving things along, so that's
3 why we are doing this.

4 Have a lovely evening, everyone.

5 A JUROR: You, too.

6 (Jury exits the courtroom.)

7 (Witness leaves the stand.)

8 THE COURT: Everyone can be seated.

9 I think last week, or maybe over the weekend I had a
10 submission from the defense regarding, I think it was Mr.
11 Burbano, is that his name?

12 MS. LASH: Yes, Your Honor.

13 THE COURT: Is the Government going to respond to
14 that?

15 Are you seeking to introduce what they are
16 complaining about or --

17 MS. LASH: Your Honor, we believe -- as to the
18 statements they discuss as to Mr. Burbano, I have a copy of
19 their letter in front of me. The first statement is Abreu
20 instructed Burbano to wear blue-and-purple rubber gloves to
21 prevent leaving fingerprints.

22 The Government thinks that's not a hearsay
23 statement, it was a command from Mr. Abreu to Mr. Burbano.

24 And as to the second statement, I was busy today
25 because today is the day this gets done; we are not seeking to

1 elicit that statement from Mr. Burbano.

2 THE COURT: I think there was another one they were
3 concerned about. Was that all?

4 MS. LASH: I think those were the two statements
5 that they specified for Mr. Burbano, although Mr. Mazurek can
6 correct me if I am wrong.

7 THE COURT: Is there more than that?

8 MR. MAZUREK: I'm trying to find the document.

9 MS. LASH: Oh, I'm sorry, Your Honor.

10 On page 3 he talks about in May of 2019, when Abreu
11 tells him, You heard about the shit that I did, and Burbano
12 knew that that was a reference to the shooting that had
13 happened in February. And we do seek to elicit that
14 statement, yes.

15 THE COURT: Under what theory is that not hearsay?

16 MS. LASH: It is a statement against penal interest,
17 Your Honor. Mr. Abreu was implicating himself in a murder.

18 And as we've discussed previously, Mr. Burbano had
19 interacted with Mr. Abreu on a few occasions and we'll elicit
20 that. They were both selling drugs at the time. Mr. Abreu
21 had offered to sell Mr. Burbano drugs on a previous occasion.
22 And they were considered acquaintances when Mr. Burbano made
23 the statement.

24 THE COURT: So that's the corroborating
25 circumstance, that he would have told that to a friend of his,

1 you mean?

2 MS. LASH: Yes, Your Honor. We discussed this at
3 length at our court appearance last week, and I --

4 THE COURT: Not this statement.

5 MS. LASH: This statement, Your Honor, yes.

6 MR. MAZUREK: I don't think so.

7 MS. LASH: Yes, Your Honor, so we talked about --
8 there's two statements that Mr. Abreu made.

9 THE COURT: I know there was one that I ruled on
10 before.

11 MR. MAZUREK: Mr. Nguyen's statement, Chris
12 N-G-U-Y-E-N. We talked about that one.

13 MS. LASH: And, Your Honor, I gave a proffer at that
14 time that Mr. Burbano knew Mr. Abreu through his acquaintance.
15 They had a mutual a maintenance in common. They had
16 interacted previously before the February 2019 incident where
17 he observed Mr. Abreu cleaning the white Honda Accord and
18 wearing blue-purple gloves.

19 He -- in those occasions, he had hung out with
20 Mr. Abreu at a bar. Mr. Abreu had offered to sell him a large
21 amount of cocaine. He was dealing cocaine at the time. And
22 Mr. Burbano is expected to testify that he was selling
23 marijuana at the time and understood this as outreach from
24 someone else, who was also selling illegal drugs.

25 Then Mr. Burbano will talk about the February 11th

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1 interaction with Mr. Abreu when he went to his house, he saw
2 him cleaning out the -- a white Honda Accord wearing
3 blue-and-purple gloves, and he spent some time with Mr. Abreu
4 that night. They traveled to downtown Flushing in order to
5 park a second car that his friend had procured by using the
6 key to that car.

7 THE COURT: What is the relevance of all of that?

8 I don't understand. I thought that he was going to
9 testify that he saw him with the car that the Government
10 contends was the white Honda and that he saw him with those
11 blue grooves. That's all I understood the testimony was.

12 I didn't understand we were going to talk about
13 grand theft auto.

14 MS. LASH: I don't expect there's going to be any
15 testimony about grand theft auto.

16 THE COURT: What is the relevance of where they went
17 past that time?

18 MS. LASH: After they leave Mr. Abreu's house, they
19 go to downtown Flushing and he observes Mr. Abreu meet with a
20 young Asian man in his late 20s who's driving a white Mercedes
21 Benz with black trim.

22 THE COURT: Oh, I remember this now. That's --

23 MS. LASH: That's defendant Zhe Zhang, Your Honor,
24 we will argue.

25 THE COURT: Okay. Do you anticipate he is going to

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1 identify him?

2 MS. LASH: I do not, no. I think he will identify
3 the general characteristics of the person he observed and the
4 vehicle.

5 And we will expect testimony from another witness
6 concerning Mr. Zhang's vehicle.

7 THE COURT: Okay.

8 MS. LASH: So -- so, I expect that's what he'll
9 testify to on February 11th.

10 The additional detail that I was providing Your
11 Honor is that Mr. Burbano continued to see Mr. Abreu, and
12 Mr. Abreu continued to make outreaches to Mr. Burbano. And
13 there was an incident in the spring of 2019 where they all
14 went to have dinner together. So, that would be Mr. Burbano,
15 Mr. Abreu, a mutual acquaintance whose name is Alex Rodriguez,
16 at a restaurant in Flushing called Blend. At this restaurant,
17 Mr. Burbano had a conversation with Mr. Abreu, who
18 referenced -- well, what he said to him is, You heard about
19 the shit that I did in Flushing.

20 And Mr. Burbano will testify that he knew this to be
21 a reference to the shooting that had taken place in Flushing.

22 THE COURT: And you're saying that that is a
23 statement against penal interest?

24 MS. LASH: Absolutely, Your Honor. He is admitting
25 to his participation in a homicide that happened several

1 months prior in the location where the homicide happened.
2 He's making this statement to a person that he had met before,
3 was currently at dinner with, had attempted to sell drugs to
4 in the past, and those are the sufficiently corroborating
5 circumstances.

6 THE COURT: So, that's why you're going to bring out
7 their drug relationship?

8 MS. LASH: Yes, Your Honor.

9 And that's not all, because then Mr. Burbano sees
10 Mr. Abreu again, and this time it is outside Queens Criminal
11 Court. And outside Queens Criminal Court, Mr. Abreu says
12 again, You remember the shit that I did. I think it's going
13 to bite me in the ass, or something to that effect.

14 And, Again, Mr. Burbano will testify that he
15 understood that statement to be Mr. Abreu's second reference
16 to the murder that had happened.

17 THE COURT: Well, why did he reach that conclusion?

18 MS. LASH: Well, he used the same language that he
19 used in the first statement at the restaurant, You remember
20 that shit that I did. So, again, uses the same phrase. At
21 that time they are outside the criminal court building when he
22 makes that statement.

23 Mr. Abreu is clearly harkening back, this is the
24 next time that he had seen him after they had dinner in this
25 restaurant. So, Mr. Burbano will testify that it was very

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1 clear what Mr. Abreu was referencing when he used the same
2 language in the second meeting they had together.

3 THE COURT: What leads him in the first meeting, the
4 string of '19, why is it that he will say he concluded that
5 that was the murder of Chris Gu?

6 MS. LASH: Well, he will say that on the news the
7 next day he saw that a shooting of a man had taken place in
8 Flushing after he saw --

9 THE COURT: No, this is the spring of '19, of 2019.
10 Oh, you said the next day he would have heard --
11 seen something on TV, he wouldn't have seen it in the spring
12 of 2019.

13 MS. LASH: No, Your Honor. So, he sees Mr. Abreu on
14 February 11th.

15 THE COURT: Right.

16 MS. LASH: And the next day he sees on the news that
17 the murder had occurred. At that time, their mutual
18 acquaintance, Alex Rodriguez, informs him that he understands
19 that Mr. Abreu is involved in this.

20 THE COURT: You can't elicit that.

21 MS. LASH: We don't intend to, but his conclusion
22 that that shit that I did is based on his viewing of the
23 murder. And we don't intend to elicit the facts that their
24 mutual maintenance also stated that Mr. Abreu told him he was
25 involved in the murder.

1 MR. MAZUREK: Your Honor, I think that just explains
2 why this can't be admitted. Ms. Lash is saying that the
3 context in which he witnessed that she seeks to elicit the
4 statement from about the shit I did is based on a hearsay
5 statement from somebody else. That's not from the declarant
6 who has to make -- where there has to be clear
7 self-inculpatory statements against his penal interest.

8 The law says very strongly that, in the Second
9 Circuit, I quote "United States versus Salvador,
10 S-A-L-V-A-D-O-R, at 820 F.2d 558 pin cite 561, a Second
11 Circuit 1987 case that, I quote, "The inference the
12 trustworthiness from the proffered corroborating circumstances
13 must be strong, not merely allowable."

14 The corroborating circumstances suggested here by
15 the prosecutor is that the witness to the statement is getting
16 his context from a third-party who is saying this Alex
17 Rodriguez friend of his, who's saying, I think that's our guy,
18 that's Mr. Abreu. And is basing the fact that in May of 2019
19 at a dinner with himself, Alex Rodriguez, and another couple,
20 when Mr. Abreu says something like that shit I did -- did you
21 see that shit I did is completely ambiguous.

22 First of all, it's completely ambiguous because
23 these guys are in a drug trade and it may have -- it may be
24 against penal interest, but have no relevance to this case; or
25 it may be something completely different that we don't know

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1 about. And it is based on completely inadmissible -- the
2 foundation is based on inadmissible hearsay. The
3 corroboration is statements made by another person to Burbano,
4 not by the person, the declarant in this case, Abreu.

5 So, I think this just does not meet the 804(b)(3)
6 test in the least for Burbano to surmise based on what he
7 heard from Rodriguez that the shit I did in May of '19, the
8 statement that Abreu said at dinner, has anything to do with a
9 statement against penal interest involving a murder on
10 February 12th.

11 THE COURT: Wait a minute. I'm confused with my
12 notes.

13 How many times did he make this statement you heard
14 about what I did?

15 MS. LASH: Twice, Your Honor.

16 THE COURT: When is the first time he made it?

17 MS. LASH: We expect him to testify in about May of
18 2019.

19 THE COURT: And when is the second time he made it?

20 MS. LASH: It was shortly after that.

21 THE COURT: Is that the Queens Criminal Court?

22 MS. LASH: Yes, Your Honor.

23 THE COURT: So there's two. There's a dinner that's
24 he's in, in the spring of 2019, and what is it that's going to
25 say Abreu said precisely?

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1 MS. LASH: Your Honor, it is going to be something,
2 in sum and substance, as you heard about that shit I did.

3 And he specifies in Flushing. His understanding of
4 what he is talking about is not solely based on what their
5 mutual maintenance Allen Yu told him. Remember he had been
6 with Abreu on the night of February 11, he observed him in the
7 white car wearing the gloves and he had told him today is the
8 day this gets done.

9 THE COURT: But you're not offering that statement?

10 MS. LASH: We are not. The next day he sees on the
11 news there has been a murder in Flushing that has occurred and
12 they don't have the shooter and this is the information that's
13 available.

14 The next time he sees Mr. Abreu, Mr. Abreu is
15 carrying a gun, and --

16 THE COURT: This is in the spring?

17 MS. LASH: At Blend Restaurant, yes.

18 THE COURT: In the spring, Abreu is carrying a gun?

19 MS. LASH: He is carrying a gun, and he says you
20 remember that shit I did. Now, the last time that Burbano had
21 seen Mr. Abreu was on February 11th of 2019.

22 THE COURT: Does he say that I did in Flushing or --
23 at the dinner, does he say you heard about what I did in
24 Flushing?

25 MS. LASH: I think so, Your Honor. I don't have his

1 3500 material in front of me.

2 MR. MAZUREK: It just says, You heard about that
3 shit I did, at 3500-RB-5 at page 3, which was Exhibit B to our
4 September 28, 2023 letter motion.

5 MS. LASH: Yes, Your Honor, and then at 3500-RB-2,
6 Mr. Burbano remembers it as: You heard about that shit I did
7 in Flushing.

8 MR. MAZUREK: And I just note, Your Honor, which I
9 pointed out in footnote one in our same letter motion, on page
10 3, that at that same 3500 interview that Ms. Lash is referring
11 to, RB-2, when asked about that statement that he heard from
12 Abreu is when the witness Burbano said or is reported in the
13 302 as, quote, Rodriguez showed Burbano a video of the
14 shooting of Xin Gu and told Burbano that Abreu was involved in
15 another shootout in Queens, New York, end quote.

16 So he's getting his information about the shootout
17 in Flushing from a third source, Alex Rodriguez, who showed
18 him the video of the shooting.

19 And I note that while Ms. Lash makes a connection to
20 rubber gloves and a white Honda Accord, at the time of the
21 meeting in May of 2019, at the dinner at the Blend Restaurant,
22 there were no surveillance videos of a white Honda Accord that
23 were available to the public. So, I mean, I don't know how
24 he's making that connection with respect to Abreu, seeing
25 Abreu on February the 11th. (Continued on next page.)

1 MS. LASH: So, Your Honor, to Mr. Mazurek's point,
2 we're not disputing that Alex Rodriguez indicated to the
3 witness that Mr. Abreu was involved. I'm only saying that
4 that is only one of many factors that allows Mr. Burbano to
5 conclude when Mr. Abreu clearly said to him "you know that
6 shit I did," he was referring to the murder.

7 MR. MAZUREK: And, Judge, I just want to refer you
8 to one other case which I think analyzes the legal standard of
9 804(b)(3) very well and why there needs to be not just some
10 evidence but strong evidence that it is trustworthy and
11 understandably trustworthy even by the hearer of the
12 information and that is *United States versus Liu*, L-I-U. It's
13 a Judge Caproni decision from March 9, 2022 and it's at 22
14 Westlaw 75 614 where Judge Caproni precluded the unavailable
15 witness's hearsay statements made during a telephone call in a
16 case alleging immigration fraud because the witnesses'
17 responses to the questions being asked of the witness were
18 entirely ambiguous, and that was also in the context of
19 eliciting information from the declarant about the person's
20 immigration status in an investigation for immigration fraud.

21 THE COURT: Is this -- what case law does the
22 government have to support the fact that someone can give
23 their impression about what another person was saying if they
24 don't know -- I mean, what -- I'm just concerned about that
25 kind of testimony about his giving his impression of what he

1 meant. I mean, if they talked in code or did something like
2 that, maybe that would -- but I don't know what the basis for
3 it. It seems like to me that you could elicit a statement
4 that heard about whatever he did in Flushing and maybe argue
5 that that -- what he was talking about but I don't know to
6 what extent the witness can say I don't know what he was
7 talking about.

8 MS. LASH: Your Honor, we would ask for an
9 opportunity to submit a short letter on that tonight.

10 THE COURT: That would be a good idea because I seem
11 to remember a case I had once where they were actually -- it
12 was a conversation that a witness was having with another
13 person and it was -- the fact that he explained what the other
14 person was saying to him was problematic, it's a
15 Judge Katzmann decision and it's old.

16 MS. LASH: Thank you, Your Honor. Yeah, we will
17 look for that case and others.

18 THE COURT: Yeah, because this is kind of a
19 difficult area.

20 MR. MAZUREK: And, Judge, just to follow through on
21 this issue, even with Your Honor's suggestion of just leaving
22 it as the shit I did in Flushing, the concern I have is that
23 then becomes a 403 analysis. Mr. Abreu is not here. The only
24 relevance to this statement as to Mr. Zhang would be is if it
25 had probative value to show that Abreu actually did the murder

1 in carrying out the charged conspiracy. The problem we have
2 here is that that shit did I in Flushing by a man, and as the
3 Government says, Burbano knows is a narcotics trafficker and
4 large amounts of cocaine and marijuana, I mean, that could
5 mean anything. It doesn't mean that it has the relevance that
6 the government is going to seek to introduce it and there's
7 huge, substantially prejudicial, effect that it could have on
8 Mr. Zhang because we don't even get to confront the witness
9 who said it. So the 403 analysis I think also needs to be
10 considered given the ambiguous nature of the statement.

11 THE COURT: Well, the government will present
12 something and I will review it because they haven't yet had an
13 opportunity to respond to your letter.

14 MR. MAZUREK: I understand.

15 THE COURT: When is Mr. Burbano going to testify?

16 MS. LASH: As soon as tomorrow, Your Honor.

17 THE COURT: Really?

18 MS. LASH: Yeah.

19 THE COURT: That's good.

20 MR. MAZUREK: So can we have the line-up after
21 Burbano?

22 THE COURT: Well, Mr. Burbano. Who else?

23 MS. LASH: So I will just note for the Court, we are
24 having scheduling difficulties because we had not anticipated
25 having certain witnesses this week. So our lateness in

1 providing the names of the witnesses is only due to the fact
2 that we are trying to get people from out of town to come back
3 to New York. We have scheduled for tomorrow Mr. Yu and if
4 Mr. Mazurek and Mr. Kousouros have any indication of how long
5 the cross-examination will be, that would let the government
6 know how many witnesses we need to have waiting to testify.
7 So that would be my first question.

8 After Mr. Yu testifies, we have the tow principal
9 from the tow pound in Queens, Andrei Tarasko, we have a
10 sergeant, he'll testify to the fact that Mr. Abreu picked up a
11 Honda Odyssey with a temporary West Virginia license plate, we
12 have scheduled a sergeant from the NYPD whose name is Lucas,
13 he'll testify as to LPR records, or License Plate Reader
14 records, showing the location of certain vehicles in the days
15 I think shortly before the murder, we have Dr. Kristen Landi
16 who is the medical examiner in this case. We had her slated
17 for Thursday, but given some issues with her scheduling, we
18 might try to move her to tomorrow depending on what kind of
19 time we'll have after Mr. Yu's cross.

20 And then the witnesses that are left, there are not
21 many, so they have the names of them, we have
22 Christopher Nguyen, we have Special Agent Richard Busick who
23 will testify about the cell-site location records, and --
24 right, well, we've mentioned Mr. Roberto Burbano and we have a
25 witness who will discuss some of the phone evidence in the

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1 case that's Special Agent Grace Chan and, I think that rounds
2 out the government's list at this point.

3 THE COURT: What is Grace Chan going to testify
4 about?

5 MS. LASH: She'll review some of the phone evidence
6 that has been admitted in this case, particularly the
7 conversation between Mr. Abreu and Mr. Zhang during the period
8 of the conspiracy.

9 THE COURT: What is she going to -- what do you mean
10 she's going to review it? What is she going to say? Speaker?

11 MS. LASH: Your Honor, that conversation has been
12 admitted per stipulation and the government will show that
13 Mr. Zhang and Mr. Abreu were in close contact in the months of
14 the conspiracy, that they sold marijuana together, that they
15 were close friends, and, so, Special Agent Chan will review
16 some of these messages for the jury.

17 THE COURT: Is she going to interpret them?

18 MS. LASH: No.

19 THE COURT: Yeah.

20 MS. LASH: She'll publish them to the jury.

21 And, Your Honor, on that note, given what occurred
22 with the witness last week, You You, on cross-examination when
23 the defense said there's no way that the conversation between
24 Mr. Zhang and Mr. You You can be admitted because it's so
25 prejudicial, and then on cross-examination, despite the

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1 hearsay contents of that conversation, they entered portions
2 that the government sought to enter on direct, but we
3 understood that the Court had prevented us from doing so. So
4 on that basis, we want to enter the full conversation between
5 Mr. Zhang and Mr. Abreu.

6 MR. MAZUREK: Judge, we only entered the relevant
7 portions of it that had to do with the conversations that the
8 witness was testifying about, not the full 1,100 pages of
9 hearsay that the government initially wanted to introduce.

10 MS. LASH: It's not hearsay --

11 THE COURT: I'm sorry, we seem to be drifting off
12 into something that I'm not even sure what we're talking
13 about. You have conversations between Mr. Zhang and
14 Mr. Abreu?

15 MS. LASH: Yes, Your Honor.

16 THE COURT: That you want to introduce to show what?

17 MS. LASH: So show their close relationship
18 association, to show that they were engaged in marijuana sales
19 together and, yeah, to show their relationship during the
20 course of the conspiracy.

21 THE COURT: There's no objection to that?

22 MR. MAZUREK: Well, they had this huge -- now it's
23 been introduced --

24 MS. LASH: Your Honor, we had an 89 page document.
25 I've seen these text message exchange -- okay, there's a

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1 number of messages on each page. It's an 89 page document. I
2 simply want to enter the entire conversation to prevent it
3 look like the government was hiding information from the jury
4 on cross-examination if the defense seeks to enter portions.

5 THE COURT: You mean of an individual conversation
6 on an individual day? Is that what you're talking about?

7 MS. LASH: Either under a rule of completeness
8 theory.

9 THE COURT: Are you talking about something you
10 think they're going to do or something that they've done? I'm
11 not sure what you're talking about.

12 MS. LASH: We had marked an 1,100 page conversation
13 --

14 THE COURT: That, I remember.

15 MS. LASH: -- between You You and Zhe Zhang. It was
16 1,100 pages and it spanned from October through February. We
17 sought to enter the entire conversation. The defense objected
18 to certain portions because of relevance and 403 grounds. We
19 reduced the conversation to about 100 pages. On
20 cross-examination, the defense entered portions of the 1,100
21 page original chain that the government had sought to enter
22 and discuss with the witness. I only raise that to say --

23 THE COURT: You mean that they sought to raise
24 portions that you had cut out?

25 MS. LASH: Yes. And, so, I raise this to say that

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1 we, in good faith, had reduced the messages between Mr. Abreu
2 and Mr. Zhang to a 13 page text chain. Now we are not using
3 the 13 pages, we are seeking to enter the entire text chain
4 between them.

5 THE COURT: Well, which entire text chain? Are you
6 talking about all -- are you back to 1,100 pages? When you
7 say entire text chain --

8 MS. LASH: No, Your Honor. The 1,100 pages was
9 between You You and Zhang. This text message chain is about
10 100 pages.

11 THE COURT: Had you previously cut it down?

12 MS. LASH: Yes, Your Honor. We produced the 100
13 pages, we marked it as an exhibit, the defense had it for six
14 weeks, and then on the eve of trial, they raised to the Court
15 that this 89 page chat between Abreu and Zhang was prejudicial
16 because they talked about a bowl movement and a fat cousin.
17 So the government reduced the 89 page chat to 13 pages. Now I
18 believe they're going to enter messages that were in the
19 original 89 page chat on cross-examination of Special Agent
20 Chan. And, so, given what transpired with You You, the
21 government seeks to enter the entire chat between Mr. Abreu
22 and Mr. Zhang, which is approximately 100 pages.

23 MR. MAZUREK: Your Honor, still, we object,
24 obviously, to the 89 pages. It is hearsay and it is not
25 admissible. We understand that the Court would allow them

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1 some leeway to show the relationship and I guess there is
2 marijuana --

3 THE COURT: You know the 13 pages they're going to
4 introduce, right?

5 MR. MAZUREK: We would only be seeking, I think like
6 two pages around February the 11th of text messages under the
7 rule of completeness to show the conversations between
8 Mr. Abreu and Mr. Zhang.

9 THE COURT: Whatever you want to get in, I'll permit
10 the Government to get in, in their direct. So I think that --
11 I mean, the government wants to introduce the whole thing and
12 I guess what their concern is that they would've introduced
13 all of this and now you're coming forward after they narrowed
14 it down and then cherrypicking things.

15 MR. MAZUREK: We can show them -- they can put in
16 their exhibit, I don't care. It was 0just the dates that --
17 there's a text message on February I guess 11th or 12th, we
18 would ask for the -- just the text exchanges on the preceding
19 two or three days.

20 THE COURT: And nothing else because --

21 MR. MAZUREK: No, nothing else.

22 THE COURT: Nothing else outside of the 13 pages
23 that they had suggested?

24 MR. MAZUREK: That is correct.

25 THE COURT: All right. Then that would seem to

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1 solve the problem. I mean, you found 13 pages that
2 highlighted what you were concerned about, made the point and
3 I understand your concern that they're coming back making it
4 look like they left something out but that seems like if you
5 think these 13 pages are the most relevant and they deal with
6 everything you want to bring out about the relationship, then
7 you can add the pages they want to put in and I'll preclude
8 them from putting anything else in, in cross.

9 MS. LASH: Okay. Thank you, Your Honor.

10 THE COURT: That seems to work for everybody. Okay.

11 MR. MAZUREK: We also have the Carlos Senquiz issue
12 still.

13 THE COURT: You want to put in the Carlos Senquiz
14 grand jury testimony?

15 MR. MAZUREK: Yes.

16 MR. KOUSOUROS: Obviously, I join in that, Judge.

17 THE COURT: At this point in time, the defense makes
18 a pretty strong argument that you've taken the position in all
19 of these search warrants that it's David Yu who is giving the
20 accurate description, that his matches all of your other
21 evidence. And that in Carlos Senquiz's rendition of David Yu
22 being the shooter, you didn't put in the warrants, you knew
23 about it, you didn't put in the warrants because you didn't
24 believe it. So if he testifies in a grand jury, you don't
25 believe it, why don't you have a motive to cross examine him

1 at that point?

2 MS. LASH: Because of the timing, Your Honor.

3 THE COURT: What's the timing? He testifies after
4 you've already had one search warrant affidavit.

5 MS. LASH: Well, I think we had two search warrants
6 affidavits by the time he testified, But he testified in
7 September of 2021. We did not sit down with David Yu for a
8 proffer. We had his post-arrest and we did not sit down with
9 David Yu for a proffer until November.

10 THE COURT: But you used David Yu in your search
11 warrants and told the magistrate judge that this is the guy
12 who's telling the truth. So how can you tell me that you
13 really haven't heard enough from David Yu? You were relying
14 on what he said in three search warrants.

15 MS. LASH: We were, Your Honor, but we did not have
16 the additional information in September of '21 that we later
17 gained and could have used to cross examine Mr. Senquiz had he
18 testified at a later date. And what I mean by that is not
19 just additional meetings with David Yu, but after
20 Carlos Senquiz testified, we signed up additional cooperating
21 witnesses. So they provided the information to the FBI, we
22 signed up additional cooperating witnesses, and we had the
23 ability to ask David Yu what he told Carlos Senquiz, who is
24 the only other person who can testify to the substance of that
25 conversation. The Second Circuit has held --

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1 THE COURT: Wait a minute. Carlos Senquiz goes to
2 the jury, in I'm sorry, is it September of 2021?

3 MS. LASH: Yes, Your Honor.

4 THE COURT: And you interview David Yu, the first
5 post-arrest statement is in April?

6 MS. LASH: April of '21, yes, and the first proffer
7 happens in October of '21 where there's additional
8 information -- additional questions asked about
9 Carlos Senquiz. The fact is that September of '21, while we
10 obtained two search warrants and we went on to obtain several
11 additional search warrants, no arrests have been made, only
12 two searches had been conducted, one of which was for
13 cell-site information in a 30-day time period, the other of
14 which was for information on Mr. Abreu's phone, we simply
15 didn't have the information or the similar motive which I
16 think is the question that the Second Circuit says that the
17 burden is actually on the defense that they need to show, and
18 our motive in September of '21 was to gain additional
19 information for these search warrants, to --

20 THE COURT: But you didn't put this information that
21 you gained in your search warrant?

22 MS. LASH: We did not.

23 THE COURT: So, I don't know --

24 MR. MAZUREK: Judge, with respect to the cooperating
25 witnesses, by September '21 they had Chris Lin give all of his

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1 statements about the admissions that Abreu made to him and the
2 information about Zhe Zhang feeling, you know, the way he felt
3 on February the 13th, they also had all of the Burbano
4 statements before September '21. The only person they did not
5 have at that point in time was You You who cooperated after he
6 was indicted, but they basically had all of the evidence. The
7 kind of evidence that they obtained at the time of the arrest,
8 you know, they're hardly using any of that evidence against
9 Allen Yu and Zhe Zhang. They had basically all of the
10 evidence that they had by September of 2021 including three
11 cooperators, or at least two and a half if you don't count
12 David Yu although he was prominently mentioned in their search
13 warrants.

14 MS. LASH: So that's not accurate. There's a
15 difference between speaking to someone and getting information
16 in a proffer setting and having someone signed up as
17 cooperating witness where has pled guilty to crimes and agreed
18 to testify at trial.

19 THE COURT: You're undermining the entire search
20 warrant opinion if you keep talking about this. I'm really
21 concerned about that. I mean, you basically asked all of the
22 magistrates to rely on the statements that David Yu gave and
23 now you're saying -- I mean, you're not taking the position
24 that you never have a similar motive because it's the grand
25 jury versus trial, are you?

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1 MS. LASH: No, but, Your Honor, I don't understand
2 why we can't have it both ways. We were relying on David Yu
3 --

4 THE COURT: Well, that will be quoted back in I
5 can't tell you how many of the 18,000 additional letters that
6 I'm going to get they're going to have that phrase in there,
7 Ms. Lash. You can withdraw that right now if you want to.

8 MS. LASH: Thank you, Your Honor. I'm only trying
9 to say we found David Yu's information at the time from the
10 post-arrest to be reliable, and we've said that in the crimes
11 hearing and will continue to say that, we testified to that
12 information at trial. But at that time, we didn't have the
13 same motive to cross examine Carlos Senquiz in the grand jury.

14 THE COURT: Well, you didn't believe what he said.

15 MS. LASH: We did not.

16 THE COURT: Doesn't that give you a motive to cross
17 examine him when he testifies in the grand jury that this guy
18 told me that he was the shooter. You didn't believe that
19 David Yu was the shooter, you've never believed that David Yu
20 was the shooter, so if he says that, why don't you have a
21 motive to cross examine him about it?

22 MS. LASH: Because if you look at what was said in
23 the grand jury testimony, Carlos Senquiz said that he
24 understood that he sent him that video because he thought he
25 was telling him that he was the shooter. And I think I've

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1 said this from the beginning, I think that those two things
2 can exist, right, David Yu sent him this video and
3 Carlos Senquiz reached the incorrect conclusion that the
4 purpose of sending him that video was to show that he was the
5 shooter.

6 (Continued on the following page.)
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1 (Continuing.)

2 THE COURT: He said the guy told him, did you see
3 the person in the video, that's me, I'm the shooter.

4 What is subtle about that?

5 MS. LASH: The statement that he -- the question
6 that was asked to him was, why did he send you that video,
7 what did you -- why did you understand that he sent you that
8 video, and the answer that he gave was not, I didn't need to
9 understand it because he told it to me. He said, I understood
10 that he sent me that video because he was telling me that he
11 was the shooter.

12 MR. KOUSOUROS: Judge, in lines 18 and 19, the
13 question is, why did you understand that to be the case, and
14 the answer is, when he sent it to me, he told me to take a
15 look at it to see if I could see him as the shooter. I mean,
16 those are the words he used, not that -- let me just finish,
17 Devon.

18 Not that, you know, he understood that that's what
19 he was saying. That's what he said. When he sent it to me,
20 he told me to look at it to see if I could see him as the
21 shooter. And quite frankly, that's why he understood what
22 David Yu was saying to him was that he was the shooter.

23 THE COURT: Yeah. All right. Well, this is going
24 to be -- you intend to put this Grand Jury testimony in in
25 your case?

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1 MR. KOUSOUROS: We do, judge.

2 MS. LASH: And Your Honor, if the Court's ruling is
3 that the Grand Jury testimony is allowed to come in in the
4 defense case, we'd ask that we can introduce evidence of
5 Carlos Senquiz's relevant convictions.

6 THE COURT: Okay. And which convictions are not
7 over 10 years old?

8 I mean, the ones over 10 years old, they don't come
9 in. Which other ones?

10 MS. LASH: Yes, Your Honor. We describe those on
11 Page 5 and 6 of our letter. There's a 2022 felony conviction
12 for attempted robbery in the second degree causing physical
13 injury. That was a home invasion stabbing that Mr. Senquiz
14 committed.

15 There's a 2019 felony conviction for the attempted
16 criminal sale of controlled substances in the third degree,
17 and then there is a 2002 felony conviction for possession of a
18 weapon and a 2002 --

19 THE COURT: Well, the 2002, that's more than 10
20 years, right?

21 MS. LASH: Yes, Your Honor.

22 THE COURT: I'm not good at math, but that strikes
23 me as that's old.

24 Now, the argument about the 2022 conviction is --
25 well, let me ask, first of all, defense counsel, why wouldn't

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1 a 2019 conviction that's before he testifies, why isn't that
2 admissible?

3 MR. MAZUREK: Your Honor, because 609 talks about
4 evidence of a prior conviction.

5 THE COURT: That one is a prior conviction, isn't
6 it?

7 MR. MAZUREK: No, his testimony was in '21.

8 THE COURT: This was a 2019 attempted.

9 MR. MAZUREK: No, I'm sorry. I thought you were
10 talking about -- sorry. 2019?

11 THE COURT: Yeah, why doesn't that come in?

12 MR. MAZUREK: I just don't think robbery goes to
13 credibility.

14 MR. KOUSOUROS: No, 2019 is attempted criminal sale
15 of a controlled substance.

16 THE COURT: That's a felony, isn't it?

17 MR. KOUSOUROS: Yes.

18 THE COURT: Then why wouldn't it come in? It
19 doesn't have to go to --

20 MR. MAZUREK: I withdraw that one.

21 THE COURT: Okay. So the other question is the 2022
22 conviction.

23 Your claim there is that that shouldn't impeach his
24 credibility because he gave the statement before he was
25 convicted. That's your argument, right?

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1 MR. MAZUREK: Before that crime was committed, yeah.

2 THE COURT: Before that crime was committed or
3 before he was convicted?

4 MR. MAZUREK: Oh, I guess --

5 MR. KOUSOUROS: We, it's clearly it was before he
6 was convicted. It's a 2000 --

7 THE COURT: I don't know. What is the Government's
8 argument about that?

9 MS. LASH: Your Honor, the reason that we're reading
10 in this Grand Jury testimony is because Mr. Senquiz is
11 unavailable. If he were to take the stand this week and
12 testify as to the statements, we would be able to impeach him
13 with a 2022 felony conviction.

14 THE COURT: That seems to make sense.

15 MR. MAZUREK: 609 talks about prior convictions in
16 the rule.

17 THE COURT: But this is coming in, in effect, as if
18 he's testifying today, because he's not available. So it's
19 the equivalent of his offering testimony today. I don't know
20 if there's any case law on this. It says 806 -- yeah.

21 It says 806 allows impeachment evidence of a hearsay
22 statement that would be admissible for those purposes if the
23 declarant had testified as a witness. I think we only found
24 one case from the Military Court of Appeals.

25 That's *U.S. versus Bell* 44 MJ 403, 407. And it's

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1 C.A.A.F 1996. Maybe somebody in the Government would find a
2 case that's a little more recent than that.

3 MS. LASH: We can try, Your Honor.

4 THE COURT: Okay. All right.

5 MR. MAZUREK: Oh, and just one last thing to make
6 sure the record is complete.

7 I believe that bolstering our Carlos Senquiz's
8 argument is the fact that the Government, today, on direct
9 examination, they decided to elicit the meeting between Carlos
10 Senquiz and David Yu, and elicited the testimony that David Yu
11 completely denied the conversation that we are seeking to
12 introduce. So since the Government now has actually done it
13 on their own, they shouldn't be able to, shall, I dare say,
14 get their cake and eat it too or have it both ways by
15 eliciting that information and then preventing us from
16 introducing --

17 THE COURT: Well, you can -- what they, I guess,
18 were attempting to do was bring out, in essence, impeachment
19 evidence before you did.

20 MR. MAZUREK: Well, they were trying to take the
21 sting out of it. But once they open the door to it --

22 THE COURT: Well, opening the door to it is allowing
23 you, which you would have done anyway, to ask him, isn't it a
24 fact that you told Carlos Senquiz X?

25 MS. LASH: Which he did several times on

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1 cross-examination in the 15 minutes that he had.

2 THE COURT: Yeah, I mean you can ask him --

3 MR. MAZUREK: I understand that. But I'm saying, it
4 just enhances the record for us to be able to use 804(b)(1)
5 when they are the ones that actually inserted this in their
6 own direct examination of their own witness. That's all I'm
7 saying.

8 THE COURT: I'm not sure that it helps that
9 argument, particularly. I think you otherwise have a strong
10 argument. I don't think that necessarily helps it at all.
11 Okay.

12 See you all tomorrow morning, 9:00 o'clock, bright
13 and early.

14 * * * * *

15 (Proceedings adjourned at 6:17 p.m. to resume on October 3,
16 2023 at 9:00 a.m.)
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I N D E XWITNESSPAGE**BRAINYS ALBERTO ACOSTA PENA**

DIRECT EXAMINATION BY MS. LASH 1363

CROSS-EXAMINATION BY MR. MAZUREK 1380

JONATHAN DIVER

DIRECT EXAMINATION BY MR. PARK 1404

CROSS-EXAMINATION BY MR. SER 1432

REDIRECT EXAMINATION BY MR. PARK 1460

JEFFREY LEHN

DIRECT EXAMINATION BY MS. MOORE 1462

CROSS-EXAMINATION BY MR. SER 1501

DAVID YU

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